ASPECTS OF INTERPRETATION
OF THE *Personal Property Securities Act 2009*

The title is taken from the conference programme. The subject is endless and the academic and other discussions of the PPSA are extensive; I nonetheless offer some general thoughts on how the Australian courts will tackle the PPSA.

In CIC Insurance Limited v Bankstown Football Club Limited[1] we are told that –

> "… the modern approach to statutory interpretation (a) insists that the context be consulted in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses 'context' in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as [reports of law reform commissions], one may discern what the statute was intended to remedy. … In particular … if the apparently plain words of a provision are read in the light of the mischief which the statute was intended to overcome and of the objects of the legislation, they may wear a very different appearance."[2]

This approach generally holds sway, although with reminders of the primacy of the text of the legislation in arriving at the result and the impermissibility of displacing a clear meaning of the text by regard to extrinsic materials.[3] There is inevitably an interplay between text and context, not allowing a mechanical outcome in the particular case.

To the common law approach must be added, for the PPSA, ss 15AA and 15AB of the *Acts Interpretation Act 1901* (Cth).

Section 15AA provides that in the interpretation of a provision of an Act "a construction that would promote the purpose or object underlying the Act (whether

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[1] (1997) 187 CLR 384.
[2] at 408 per Brennan CJ and Dawson, Toohey and Gummow JJ.
[3] eg Alcan (NT) Alumina Pty Limited v Commissioner of Territory Revenue (Northern Territory) (2009) 239 CLR 27 at 46-7 per Gaudron, Gummow, Hayne and Callinan JJ. So it was said in Re Bolton; ex parte Beane (1987) 162 CLR 514 at 518 per Mason CJ and Wilson and Dawson JJ, and has often been repeated, "The words of a Minister must not be substituted for the text of the law".

the purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object".

Section 15AB provides that consideration may be given to extrinsic material capable of assisting in ascertaining the meaning of a provision, either to confirm the meaning as the ordinary meaning conveyed by the text taking into account its context in the Act and the purpose or object underlying the Act, or to determine the meaning if there is ambiguity or obscurity or the ordinary meaning would lead to a manifestly absurd or unjust result.

It is specifically provided in the PPSA that the *Acts Interpretation Act* applies to it.[4] The extent to which these sections expand or are narrower than the current common law approach need not presently be considered.[5] At the least, they are consistent with and endorse promotion of a legislative purpose and regard to context in the wide sense. None of this will be new to you, but I want to say something of those two areas in the interpretation of the PPSA.

Although it is commonly done, speaking of the purpose of legislation is problematic and should not mislead. The so-called purposive theory of statutory interpretation has a number of difficulties, akin to the difficulties with interpretation by finding the intention of the legislature. Legislation often contains policy compromises, or is itself not explicit and even unclear as to purpose on the particular issue which arises. Save at a very general level there may be created a prior issue of divining the purpose; its true source will often be only in the words of the statute, which after all are the expression of the legislative purpose or the legislature's intention.[6] The Minister's explanation in a second reading speech, for example, may assist in identifying the mischief addressed or the purpose in mind, but that must be tested against and found in the words of the legislation.

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[4] Section 11; perhaps oddly, the current Acts Interpretation Act but not any amendments.
[5] See the discussion in Pearce and Geddes, Statutory Interpretation in Australia, 7th edition, pars 2.9-2.10, 3.17-3.18.
[6] For a critique of purposivism and intentionalism in statutory interpretation see in particular Eskridge & Frickey, "Statutory Interpretation as Practical Reasoning", (1989-90) 42 Stan LR 321, and for an overview of theories of statutory interpretation Corcoran, "Theories of Statutory Interpretation", in Corcoran & Bottomley (eds), Interpreting Statutes (2005), Ch 2.

Sometimes Acts specifically state a purpose or purposes, but the PPSA does not. Without going to extrinsic materials, it can be said that the legislative purpose is to provide a new and comprehensive regime for recognition and enforcement, including regulation of priorities, of security interests in personal property; to frame new or modified concepts, such as security interest, attachment and perfection; and from the detail of the rules laid down, to have a regime operating firmly as prescribed in the legislation in the application of the concepts and the rules. This is no mean purpose. That it should be promoted, however, will be only of general assistance in construing the intricacies of the PPSA.[7]

Take, for instance, the fundamental definition of a security interest in s 12 of the PPSA. It begins in terms of an interest in relation to personal property provided by a transaction "that in substance secures payment or performance of an obligation"[8]. This could indicate a generous purpose, one might think. But there are added some interests in relation to personal property whether or not the transaction concerned in substance secures payment or performance of an obligation,[9] notably a lease or bailment for more than one year, and there are excluded particular interests including interests "of a kind prescribed by the regulations".[10] Section 8 excludes a great many interests from the application of the PPSA, even then with qualifications. Indeed, it may be prescribed by regulation that the PPSA applies to other kinds of interest.[11] The PPSA does not fully commit itself to the concept of a security interest, but expresses qualifications. Should there be restraint in finding a purpose that the definition be given an ample scope?

[7] In Potter v Minehan (1908) 7 CLR 277 O'Connor J adopted from Maxwell on Statutes, 4th ed, p 112 that "[I]t is in the last degree improbable that the legislature would overthrow fundamental principle, infringe rights or depart from the general system of law, without expressing its intention with irresistible clearness". This may now not be so improbable, see McHugh J in Malika Holdings Pty Limited v Stretton (2001) 204 CLR 290 at 298-9, but radical changes worked by the PPSA, such as departure from any sanctity of title or ownership, are clear.
[8] Section 12(1).
[9] Section 12(2).
[10] Section 12(5), (6).
[11] Section 8(3).

What is clear enough, perhaps falling within the legislative purpose, is that the PPSA with its new concepts should be interpreted afresh without being tied to traditional notions of title and ownership. As was said in the Canadian case of re Giffen,[12]

> "[T]he rights of the parties to a transaction that creates a security interest are explicitly not dependant upon either the form of the transaction or upon traditional questions of title. Rather they are defined by the Act itself."[13]

This was taken up in the first New Zealand case, Graham v Portacom New Zealand Limited.[14] In Waller v New Zealand Bloodstock Limited[15] the majority referred to the need to put aside old learning,[16] and took an approach turning on "the purpose of the legislation",[17] it seems a purpose that where title lay did not determine the result.

We can expect that the same approach will be taken to the PPSA, and Kevin Lindgren will say more on this. My point, however, is that the purpose flows from and is found in the words of the legislation. It would be wrong grandly to voice a legislative purpose that ownership and title are irrelevant. They are not: for example the "*nemo dat*" rule underlies continuation of a security interest as against a transferee,[18] and by s 254 the general law is not excluded to the extent it is capable of operating concurrently with the Act. With recognition of a general purpose, the detailed provisions govern.[19]

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[12] (1998) 155 DLR(4th) 322.
[13] at [26].
[14] (2004) 2 NZLR 528 at [22], [27].
[15] (2006) 3 NZLR 635.
[16] at [18].
[17] at [72].
[18] ss 32, 46.
[19] See the detailed discussion of whether possession of collateral falls within "rights in the collateral" in s 19(2) and supports attachment of a security interest in Whittaker, "The Scope of 'Rights in the Collateral' in Section 19(2) of the PPSA – Can Bare Possession Support Attachment of a Security Interest?" (2011) 34(2) UNSW Law Journal 524; the author postulates four "models" and asks which works best for the PPSA, with textual analysis including as to the extent to which the "*nemo dat*" rules is overridden. Another example of finding a legislative purpose, this time from the report of the New Zealand Law Reform Commission that ultimately led to the passing of the New Zealand Act, is Rabobank NZ Limited v McAnulty (2011) 3 NZLR 192. There was a drafting anomaly in the equivalent to s 13 of the PPSA dealing with a PPS lease, referring first to a lease or bailment and then only to a lease; it has been fixed in s 13. The purpose was to establish a category of longer term leases that would be automatically subject to the Act in the interests of certainty, see at [19], [27]; with respect, it is not entirely clear how that helped cure the anomaly, which was readily enough cured by reasoning that the two references would only work if they were co-extensive.

This can, I think, be seen in McKay v Toll Logistics (NZ) Ltd[20]. ASB had a security interest in some DVDs. Toll had a contractual lien over the DVDs, also a security interest. ASB had priority unless s 93 of the Act, referring to "a lien", gave Toll priority. Did s 93 mean any lien, or only a lien which was not a security interest? The latter construction was upheld, from the terms of s 93 and the scheme for ordering priorities found in the Act. It was added that the other construction would also be inconsistent with the "underlying purpose" of the Act; but, albeit with reference to the aim of a unified system of personal property security law, the scheme and the purpose were both found in the Act's treatment of contractual liens as security interests with the priority rules for security interests. It was in truth a text-based purpose, with a view to making the Act work.[21]

If one goes to extrinsic materials, there is an embarrassment of riches. The PPSA has a pedigree from Article 9 of the United States *Uniform Commercial Code* through Canadian legislation to New Zealand legislation, and follows a host of enquiries, discussion papers, and reports. But for a number of reasons, I suggest that there will be caution in the resort to these materials.

One is inherent in any regard to context in the wide sense. An Act is a formal statement of Parliament's will, which the Courts must respect in their constitutional relationship with the legislature and which citizens should be able to comprehend and obey in determining how they should regulate their affairs. The PPSA is particularly an Act which ordinary persons in many commercial and non-commercial

[20] (2010) 3 NZLR 700.
[21] See the detailed discussion of whether possession of collateral falls within "rights in the collateral" in s 19(2) and supports attachment of a security interest in Whittaker, "The Scope of 'Rights in the Collateral' in Section 19(2) of the PPSA – Can Bare Possession Support Attachment of a Security Interest?" (2011) 34(2) UNSW Law Journal 524; the author postulates four "models" and asks which works best for the PPSA, with textual analysis including as to the extent to which the "*nemo dat*" rules is overridden. Another example of finding a legislative purpose, this time from the report of the New Zealand Law Reform Commission that ultimately led to the passing of the New Zealand Act, is Rabobank NZ Limited v McAnulty (2011) 3 NZLR 192. There was a drafting anomaly in the equivalent to s 13 of the PPSA dealing with a PPS lease, referring first to a lease or bailment and then only to a lease; it has been fixed in s 13. The purpose was to establish a category of longer term leases that would be automatically subject to the Act in the interests of certainty, see at [19], [27]; with respect, it is not entirely clear how that helped cure the anomaly, which was readily enough cured by reasoning that the two references would only work if they were co-extensive.
[21] (2010) 3 NZLR 700.

transactions, not just lending and borrowing, must be able to act upon, and is one crafted in comprehensive detail.

Take, for example the concepts of attachment[22] and perfection[23] of a security interest; they are new, the registration system is vital, and how it all works should be ascertainable by the citizen from the words used by the legislature. Although regard to extrinsic materials is authorised, there is artificiality in effectively attributing to the citizen a knowledge and understanding of the forebears of the PPSA, their application in other jurisdictions, and the extensive consideration leading to the comprehensive and detailed crafting and the precise wording of the Act. On the modern approach to statutory interpretation that can and perhaps sometimes must be done, but the very richness of the available materials creates a difficulty in resorting to them. For the PPSA, I suggest, the primacy of the text is enhanced.

It may be noted that there is a broadly equivalent issue in the construction of contracts. Regard should be had to surrounding circumstances and the object or purpose of the transaction.[24] Lord Hoffmann has proffered an expansive view of admissible evidence of surrounding circumstances,[25] but it has not yet been embraced in Australia, and one reason for not embracing it is that contracts are generally assignable and third parties may have an interest in the contract but are remote from its making.[26]

Another is the very process of the compilation of the PPSA, with its careful wording and many departures from or adjustments to the wording of its forebears. A listing would be a massive task,[27] and plainly there will sometimes be close

[22] Section 19.
[23] Sections 21, 22.
[24] For example, DTR Nominees Pty Limited v Mona Homes Pty Limited (1978) 138 CLR 423 at 429; Codelfa Construction Pty Limited v State Rail Authority of New South Wales (1982) 149 CLR 337 at 349; although there is currently some controversy over whether ambiguity must first be found, see Wong and Michael, "Western Export Services v Jireh International: Ambiguity as the gateway to surrounding circumstances?" (2012) 86 ALJ 57 and Mason, "The distinctiveness and independence of intermediate courts of appeal", (2012) 86 ALJ 308.
[25] Investors' Compensation Scheme v West Bromwich Building Society (1997) UKHL 28; (1998) 1 WLR 896.
[26] See Spigelman, "From Text to Context: Contemporary Contractual Interpretation" (2007) 81 ALJ 322 and "Contractual Interpretation: A Comparative Perspective" (2011) 87 ALJ 412.
[27] A brief table of concordance in O'Donovan, Personal Property Securities Law in Australia, occupies 60 pages.

correspondence, sometimes not. But the process itself indicates that the PPSA should be taken on its own terms, for what its words express.

To take the definition of a security interest, compare the definitions in the PPSA and the New Zealand Act –

> "… an interest in relation to [in] personal property [created or] provided for by a transaction that, [no comma] in substance, [no comma] secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property) [, without regard to
> (i) The form of the transaction; and
> (ii) The identity of the person who has title to the collateral]"

Examples are then given, the lists differing slightly, and there are super-added interests which are security interests although not within the principal definition, again with slight differences. The changes in the PPSA were deliberate. They may not affect the scope of the PPSA when compared with the New Zealand Act upon careful consideration, but they require the reader of the PPSA to address and adhere to its words. There cannot be automatic transportation of New Zealand learning to the interpretation of the PPSA.

My suggestion again, then, is that in the interpretation of the PPSA the primacy of the text is enhanced, and the assistance to be gained from regard to extrinsic materials will be limited. In some interpretative tasks extrinsic materials may shed some light, or historical analysis or a statement of what was intended may be a source of inspiration to a particular interpretation, but the words must safely bear that interpretation in preference to other contenders.

That has, I think, been borne out in New Zealand decisions, although there has not been complete consistency. In Graham v Portacom New Zealand Limited[28] Rodney Hansen J found assistance in re Giffin,[29] but in doing so differed from another

[28] (2004) 2 NZLR 528.
[29] (1998) 155 DLR (4th) 322.

Canadian decision[30] and came to his own conclusion rather than following, even in a non-hierarchical sense, the former decision. In Waller v New Zealand Bloodstock Limited[31] the majority said, after noting the consistency of the appellant's argument with "certain Canadian intermediate appellate decisions" and of the respondent's arguments with the result in re Giffin, that their decision "must turn on the effect of the New Zealand legislation, which is not wholly identical to that of the various Canadian jurisdictions".[32] In Rabobank NZ Limited v McAnulty[33] the Court agreed that it was "sensible to look to" the Canadian cases, but said that they did not draw a lot of assistance from them, in part because of a difference in wording.[34] I would expect similar caution in the interpretation of the PPSA.[35]

Of course, that will depend on the comparative words and the issue. Close identity of words will be influential. In ORIX New Zealand Limited v Milne[36] Rodney Hansen J observed that "The North American cases which considered the identical phrase in personal property legislation provide the best guidance" [my emphasis].[37] There is an exception to a PPS lease for a lease of more than one year when the lessor is not "regularly engaged in the business of leasing goods".[38] The words construed in David Morris Fine Cars Limited v North Sky Trading Inc[39] were "regularly engaged in the business of leasing goods", and it was held that the focus was on the business practice of the lessor and not, as with the phrase "in the ordinary course of business", on whether the particular transaction was in the course of conduct of the lessor's business. One would think this would be followed in Australia.

There is another consideration in relation to cases interpreting the predecessor legislation. It was noted in the High Court in McNamara v Consumer Trading and

[30] Sprung Instant Structure Limited v Caswan Environmental Services Inc (1998) 6 WWR 535
[31] (2006) 3 NZLR 629.
[32] at [16].
[33] (2011) 3 NZLR 192.
[34] at [32].
[35] See also Mason, "The intent of legislators: How judges discern it and what they do if they find it", (2006) 2 Aust Bar Rev 253, also urging caution in the use of extrinsic materials in the interpretation of statutes and expressing scepticism over the exercise of finding a legislative intention.
[36] (2007) 3 NZLR 637.
[37] At [62].
[38] Section 13(2)(a).
[39] (1996) 7 WWR 332.

Tenancy Tribunal[40] that the judicial task in statutory construction differs from that in distilling the common law from past decisions.[41] Their Honours' references included Ogden Industries Pty Limited v Lucas[42] where Lord Upjohn, delivering the advice of the Privy Council, said that judicial statements as to the construction and intention of an Act must never be allowed to supplant its proper construction and the law was to be found in the words of the Act and not in what the judge said in construing it.[43] This must be the more so when the judge was construing a foreign Act which has not been wholly taken up by the legislature.

Again, a prior decision construing (say) the New Zealand Act may provide inspiration or guidance by its reasoning, despite any textual divergence of the PPSA.[44] But my point for your consideration is that the interpretation of the PPSA will be driven by close attention to its words, for the concepts it creates and the rules it describes in detail for a personal property securities regime. [45]

I do not doubt that in any litigation the Court will be favoured, if that is the right word, with formulations of legislative purpose said to be apt to the issue, and with

[40] (2005) 221 CLR 646.
[41] at 661 per McHugh, Gummow and Heydon JJ, Gleeson CJ and Hayne J relevantly agreeing.
[42] (1970) AC 113.
[43] at p 127; see also Walker Corporation Pty Limited v Sydney Harbour Foreshore Authority (2008) 233 CLR 259 at 270, where Gleeson CJ and Gummow, Hayne, Heydon and Crennan JJ adopted a statement by McHugh J in Marshall v Director-General, Department of Transport (2001) 205 CLR 603 at 632-3, speaking of legislation using a phrase found in other legislation –

> But that does not mean that the courts of Queensland, when construing the legislation of that State should slavishly follow judicial decisions of the courts of another jurisdiction in respect of similar or even identical legislation. The duty of courts, when construing legislation is to give effect to the purpose of the legislation. The primary guide to understanding that purpose is the natural and ordinary meaning of the words of the legislation. Judicial decisions on similar or identical legislation in other jurisdictions are guides to, but cannot control the meaning of legislation in the court's jurisdiction. Judicial decision are not substitutes for the text of legislation although, by reason of the doctrine of precedent and the hierarchical nature of our court system, particular courts may be bound to apply the decision of a particular court as to the meaning of legislation."

[44] Thus, for example, Duggan, "Some Canadian PPSA cases and their implications for Australia and New Zealand" (2010) 38 ABLR 161 analyses a number of Canadian cases for their assistance despite differences in wording, and correctly warns that despite the differences it would be wrong to disregard the cases altogether.
[45] What might this mean for the nature of a security interest, over which there has been some debate? Bailey v New South Wales Medical Defence Union Ltd (1995) 184 CLR 399 raised a question of construction of s 6 of the Law Reform (Miscellaneous Provisions) Act 1946 (NSW). It was said that s 6 "achieves the creation of a new right with an associated remedy to enforce it", and "[b]y its own force … creates … a charge on" insurance moneys payable presently or which may become payable (at 423). The words of the Act were given effect despite the general law as to assignment of choses in action, and this was a description of their effect. It could apply to a security interest.

extensive reference to extrinsic materials and decisions in other jurisdictions, or that assistance may sometimes be found in these ways. But the answer to the particular issue of interpretation will primarily lie in reasoning from the words of the PPSA.

This should not be surprising. The modern approach to statutory interpretation, while authoritatively established and supplemented by ss 15AA and 15AB of the *Acts interpretation Act* and Its various State and Territory analogues, is formulated within the role of the Courts in the body politic. In Zheng v Cai[46] French CJ and Gummow, Crennan, Kiefel and Bell JJ said that the interpretation of legislation is "an expression of the constitutional relationship between the arms of government with respect to the making, interpretation and application of laws".[47] While the legislature enacts laws in the light of accepted principles by which they are to be interpreted, as a constitutional principle in the wide sense the legislature expresses its will in the text of the legislation and the Courts must give effect to the will so expressed.

I should go a little beyond interpretation of the PPSA. I would distinguish from this the application of the PPSA, which is just as important in giving effect to it.

Let me explain through the question posed in the conference programme, how misleading will a seriously misleading defect in a registration need to be? This refers to ineffective registration if there is a "a seriously misleading defect in relation to the registration" of a security interest.[48] The words "seriously misleading" are to be applied, and the High Court has said on a number of occasions in recent times that it is an error to replace the statutory words with re-formulations in other words.[49] I

[46] (2009) 239 CLR 446.
[47] at 455; see also Momilcovic v The Queen (2011) HCA 34; (2011) 280 ALR 221 at [38].
[48] Section 164(1)(a).
[49] As long ago as 1843 Lord Denman CJ said that "[N]othing is more unfortunate than a disturbance of the plain language of the legislature by the attempt to use equivalent terms": Everard v Poppleton (1843) 5 CB 181 at 184. See Minister for Immigration & Ethnic Affairs v Guo Wei Rong (1997) 191 CLR 559 at 572 per Brennan CJ and Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ, dealing with the phrase "well-founded fear of persecution" and saying that "it is always dangerous to treat a particular word or phrase as synonymous with a statutory term, no matter how helpful the use of that word or phrase may be in understanding a statutory term"; thus the statutory phrase was applied, not the judicial exegesis of a real chance of persecution. Kirby J in particular has said that the words of the statute are to be applied, not its judicial expositions, for example Roy Morgan Research Centre Pty Limited v Commissioner of State Revenue (Vic) (2001) 207 CLR 72 at 89; Victorian WorkCover Authority v Esso Australia Limited (2001) 207 CLR 520 at 545; and Aktiebolaget Hassie v Alphapharm Pty Limited (2002) 212 CLR 411 at 460 "… in the end the duty of

prefer answering the "how misleading" question as an application of the PPSA, not its interpretation. The answer is ultimately a matter of judgment upon the particular facts, which I distinguish from interpretation.[50]

Some reference to another area of the law may be useful. We are all now familiar with s 52 of the Trade Practices Act 1974 (Cth), now s 18 of the Australian Consumer Law, and its simply words "conduct that is misleading or deceptive or is likely to mislead or deceive". There were some questions which might be called interpretation, for example whether conduct had to have actually misled in order to be misleading.[51] But once they were settled, what remained were myriad applications of the words according to the circumstances, including circumstances in which silence could offend.[52] Even the cases on the audience to whom the conduct is directed and how sophisticated it should be taken to be[53] seem to me to be better regarded as part of a judgment in applying the words of the statute.

I do not suggest transposing the learning on which there has been misleading or deceptive conduct to seriously misleading defects in registration; it is a quite different area of the law. My point is that in each case the task is fact-specific, essentially one of assessment of the facts and deciding whether or not the words of the Act are met. For the PPSA, there are many provisions which will be worked out in the Courts by illustrative application as distinct from interpretation, such as whether a disposition is in the ordinary course of the seller's business[54] and whether enforcement action is taken in a commercially reasonable manner.[55] There is no offence here to the constitutional relationship between the arms of government, because the legislature has left it to the Courts to give content to, for example, "seriously misleading" in the particular case. Similarly, the Courts have been left to decide on the facts whether a

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courts is owed not to judicial synonyms or lawyers' metaphors used to explain the language of the statutes. The duty is to the statutory language itself."

[50] A different view is open. For example Graham, "A Unified Theory of Statutory Interpretation" 23 Statute LR 91 treats applying what he calls vague language, such as proscription of an indecent act, as a matter of interpretation; however, what is an indecent act may change over time, but the meaning of the legislation creating the offence does not.

[51] Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd (1982) 149 CLR 191 (no).

[52] For example, Henjo Investments Pty Ltd v Collins Marrickville Pty Ltd (No 1) (1988) 79 ALR 83.

[53] Eg Annand & Thompson Pty Ltd v Trade Practices Commission (1979) ATPR 40-116; Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd (1982) 149 CLR 191; Campomar Sociedad, Limitada v Nike International Ltd (2000) 202 CLR 45.

[54] Section 46.

[55] Section 111.

transaction “in substance” secures performance or payment of an obligation. That also I would prefer to regard as a matter of application of the PPSA, not its interpretation.

Such judgments by the courts are not at all unusual. They can be informed by the same kind of regard to the legislative purpose, and perhaps to extrinsic materials, as could arise for interpretation; the field may be wider, because anything is open that assists a judgment one way or the other on the facts. But the exercise is a different one. Because the tasks are different, the judgment made in the application of the PPSA is not constrained by the rules as to statutory interpretation, whatever they may be. Rather, there can be appeal to whatever is rationally persuasive to a judgment one way or the other. That may not make it easier to predict the result in a particular case, but in the manner of the common law a number of cases will build up an understanding of the provisions.

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