

**THE ONTARIO PERSONAL PROPERTY SECURITY ACT: COMMENTARY AND ANALYSIS.**  
By Jacob S. Ziegel & David L. Denomme. Second Edition. Toronto: Butterworths, 2000. Pp. 732 (\$150.00).

The first edition of *The Ontario Personal Property Security Act: Commentary and Analysis*<sup>1</sup> was greeted by very favourable reviews.<sup>2</sup> This is not surprising. The Ontario *Personal Property Security Act*,<sup>3</sup> like its counterparts in other jurisdictions, is hard to grasp. It is based on a variety of distinctive concepts and follows a logic which is not always easy to discern. Also, the *OPPSA* represented a significant departure from the pre-existing regime for personal property, both in concept and structure. For many lawyers and judges, adjusting to the new regime was difficult. The rules regarding outdated traditional personal property security concepts, such as the floating charge, proved hard to leave behind. Organized as an annotated statute, the first edition provided a comprehensive discussion of the law and policy of the *OPPSA* and was a remarkable boon to understanding the law. It facilitated the transition from the old regime to the *OPPSA*, not least by frequently admonishing judges who, in the authors' view, had allowed the old rules to intrude into their interpretation of the *OPPSA*.<sup>4</sup>

In the second edition,<sup>5</sup> all of the strengths of the first have been preserved. The succinct introductory essay on the legislative history, purpose and main features of the *OPPSA* from the first edition has been reproduced and a second introduction has been added which, as the authors say, picks up the narrative where it left off in the first edition (June 1993). The new introduction effectively highlights major legislative and case law developments, both in Ontario and other jurisdictions. These developments are then discussed in more detail in relation to the relevant *OPPSA* provisions throughout the text.

There have been relatively few amendments to the *OPPSA*.<sup>6</sup> The Committee

---

<sup>1</sup> J.S. Ziegel & D.L. Denomme, *The Ontario Personal Property Security Act: Commentary and Analysis* (Toronto: Butterworths, 1994).

<sup>2</sup> See e.g. A.L. Close, Book Review of *The Ontario Personal Property Security Act: Commentary and Analysis* by J.S. Ziegel & D.L. Denomme (1995) 24 Can. Bus. L.J. 477; C. Walsh, Book Review of *The Ontario Personal Property Security Act: Commentary and Analysis* by J.S. Ziegel & D.L. Denomme (1995) 10 B.F.L.R. 291; R.J. Wood, Book Review of *The Ontario Personal Property Security Act: Commentary and Analysis* by J.S. Ziegel & D.L. Denomme (1994) 73 Can. Bar Rev. 626.

<sup>3</sup> R.S.O. 1990, c. P.10 [hereinafter *OPPSA*].

<sup>4</sup> This is pointed out in Wood, *supra* note 2 at 627, referring to several examples.

<sup>5</sup> J.S. Ziegel & D.L. Denomme, *The Ontario Personal Property Security Act: Commentary and Analysis*, 2d ed. (Toronto: Butterworths, 2000).

<sup>6</sup> *Personal Property Security Amendment Act, 1996*, S.O. 1996, c. 5, dealing with the suspension of the operations of the personal property security registry due to a strike; *Red Tape Reduction Act, 1998*, S.O. 1998, c. 18, Sched. E., ss. 193-202, dealing with the administration of the *OPPSA*; and the *Red Tape Reduction Act, 2000*, S.O. 2000, c. 26, Sch. B., s. 16, implementing what the authors (*ibid.* at iv) describe as "non-controversial" amendments to the *OPPSA*, such as clarifying section 25 and reversing the effect of the decision in *Adelaide Capital Corp. v. Integrated Transportation Finance* (1994), 16 O.R. (3d) 414, 111 D.L.R. (4th) 493 (Gen. Div. [Commercial List]) [hereinafter *Adelaide*], which limited secured parties' ability under section 45 to register multiple security interests under a single financing statement. These last amendments came into force only on December 6, 2000, after the second edition was published.

on Personal Property Security Law of the Canadian Bar Association (Ontario) has recommended significant changes regarding the scope of the *OPPSA* and certain clarifications.<sup>7</sup> These recommendations include a proposal that security interests in licences be made subject to the *OPPSA* specifically, and that the vexing problem of when a lease of goods is caught by the *Act* be resolved in the manner that it has in other provinces, *i.e.*, by deeming a lease for more than one year to be subject to the *Act* for most purposes.<sup>8</sup> Both these possible future reforms and the recent amendments are discussed in detail in the second edition.

Legislative developments in other jurisdictions since the effective date of the first edition are also canvassed. The relevant provisions of the new Quebec Civil Code effective January 1, 1994, are mentioned, as are the new personal property security statutes in the Maritime provinces as well as amendments to the personal property statutes in the Western provinces. The development which is covered most thoroughly, however, is the adoption of a completely revised Article 9 of the American Uniform Commercial Code, which comes into effect on July 1, 2001. The *OPPSA* is based on the predecessor of this new article and the second edition, like the first, makes frequent reference to the current Article 9 and the case law it has generated. The second edition compares the *OPPSA* to the new Article 9 too.

In the section-by-section discussion, the authors' longstanding involvement in the process of development and reform of personal property security law in Ontario and across Canada is apparent. Their analysis is particularly strong on the transition from previous generations of personal property law and the evolution of the current regime. Their experience allows them to develop credible arguments regarding the resolution of interpretive problems, rigorously critique the existing legislation in terms of its drafting and conception, shed light on the sometimes-obscure policy underlying some provisions and make reform proposals.

In addition to being intellectually rigorous, their approach is intensely practical. The operation of the *OPPSA* can only be understood in light of the operation of the registration system and a strength of the book is its ability to clearly convey how this complicated system works. In the second edition, the authors describe improvements in the system, such as its electronic registration capability.

The second edition provides even more extensive commentary and analysis than the first edition. Indeed, it is useful that the discussion of each provision is preceded by a table of contents because the exegesis regarding some of the provisions has become quite lengthy. For example, the discussion of section 25, dealing with the continuation of security interests on transfer of collateral and in proceeds, now extends to 28 pages.<sup>9</sup> In part, the additional length is attributable to the references to over a hundred new cases in the second edition, including the leading decisions in Ontario

---

<sup>7</sup> Canadian Bar Association (Ontario), *Submission to the Minister of Consumer and Commercial Relations Concerning the Personal Property Security Act* (Toronto: CBAO, 1998). The authors suggest that there is a reasonable prospect that these recommendations will be introduced soon: *ibid.* at lv.

<sup>8</sup> Discussed *ibid.* at lv-lvii.

<sup>9</sup> Compared to 22 pages in the first edition. The discussion of section 46, dealing with the manner and effect of registration and registration errors, is now 42 pages, compared to 36 in the first edition.

since work on the first edition was closed off in June 1993,<sup>10</sup> as well as decisions in other jurisdictions.

As a work for practitioners seeking to find the answers to specific questions, the annotated act structure adopted by Ziegel and Denomme is especially useful. For students who are approaching the *OPPSA* for the first time, however, such a structure can be somewhat bewildering. I have, nevertheless, found the first edition to be a valuable teaching aid. This is because the discussion of each section is clear and comprehensible, beginning with a relatively brief statement of the purpose and effect of the provision and containing cross-references to related provisions and commentary. The frequent use of examples and tables is extremely helpful.<sup>11</sup> For students, it is essential to locate the operation of the provisions in their broader commercial context. Ziegel and Denomme do this effectively.<sup>12</sup> It is also necessary to explain the complex relationship between the *OPPSA* and the federal *Bankruptcy and Insolvency Act*,<sup>13</sup> as well a range of other statutes, including the Ontario *Consumer Protection Act*.<sup>14</sup> Again, Ziegel and Denomme are rigorous in this regard. The many references to the relevant secondary literature, both in Canada and the United States, are helpful to students and practitioners alike.

In some ways, the second edition promises to be even more accessible than the first. The remarkably comprehensive index is even more detailed in the second edition,<sup>15</sup> making it easy to find whatever one is looking for. In addition, the table of contents has been substantially expanded in the second edition, which should assist all readers to understand better the overall structure and operation of the statute.

The authors' intensive treatment of the *OPPSA* remains a useful complement to other works on personal property security. McLaren's comprehensive treatise<sup>16</sup> provides a thorough analysis of the laws of secured financing in several Canadian jurisdictions organized under functional categories such as scope, attachment, perfection and so on. While discussion of the *OPPSA* occupies a central place in his work, McLaren's focus is much broader and the work now extends to five looseleaf volumes. McLaren's other principal work in the area, an annually updated annotated *OPPSA*,<sup>17</sup> does not purport to provide the same depth of analysis, consisting of less comprehensive

---

<sup>10</sup> Some examples are the well-known decision in *Adelaide*, *supra* note 6, as well as more recent decisions such as *Unisource Canada Inc. v. Laurentian Bank of Canada* (2000), 47 O.R. (3d) 616, 130 O.A.C. 74 (C.A.).

<sup>11</sup> See e.g. the examples used to illustrate the operation of the basic priority rules in section 30, as well as the tables showing the statutory liens and deemed trusts: *supra* note 5 at 249-64 and 171-72, respectively. The authors also frequently provide helpful lists, such as a list of provisions that make special reference to consumers (at 9-10).

<sup>12</sup> See e.g. the discussion of innovations in receivables financing: *ibid.* at 66-68. This comment was also made in relation to the first edition: Walsh, *supra* note 2 at 295.

<sup>13</sup> R.S.C. 1985, c. B-3.

<sup>14</sup> R.S.O. 1990, c. C.31.

<sup>15</sup> The index for the second edition has 30 pages each with two columns of entries, compared to 46 pages of entries in larger type organized in single columns in the first edition.

<sup>16</sup> R.H. McLaren, *Secured Transactions in Personal Property in Canada*, 2d ed. (Toronto: Carswell, 1989 with supplements).

<sup>17</sup> The most recent is R.H. McLaren, *The 2001 Annotated Personal Property Security Act* (Scarborough: Carswell, 2000).

commentary and a digest of cases.<sup>18</sup>

Even though the *OPPSA* is no longer at an early stage of development, understanding it remains a challenge. The first edition of Ziegel and Denomme's work was acclaimed as a valuable addition to the literature on the *OPPSA*. Commentators found little to criticize. Wisely, the second edition does not depart in any significant way from the first, other than to update it, a necessity in this dynamic area of the law, and to add a few welcome, if relatively modest, improvements.

J. Anthony VanDuzer\*

\* Associate Professor, Common Law Section, Faculty of Law, University of Ottawa

---

<sup>18</sup> One commentator on the first edition had made the useful suggestion that a table of concordance between the *OPPSA* and other provincial statutes be added: Close, *supra* note 2 at 480. This has not been done. Close's suggested revision of the presentation of the marginal notes for the sections of the *Act* has not been adopted either.