Volume 106
Issue 1 *Dickinson Law Review - Volume 106, 2001-2002*

6-1-2001

Personal Property Security in Australia-A Long, Long Trail A-Winding

David E. Allan

Personal Property Security in Australia — A Long, Long Trail A-Winding

David E. Allan*

The Promised Land

"Cheaper, Faster, Easier, Simpler, Safer"

These are the criteria for a new, effective, national security system over personal property in Australia. Bankers and their legal counsel articulated these criteria at the 1999 Conference of the Australia-New Zealand Banking Law Association.

The promised land, where it exists, is a new security law. It is based on, but does not necessarily follow, Article 9 of the United States Uniform Commercial Code ("U.C.C.") in all respects. Several countries, including Canada and New Zealand, have followed Article 9. In Australia and New Zealand it has indeed been a long, long trail a-winding. There have been many difficult mountain ranges, and sometimes direct opposition, to surmount. Each time a mountain range has been crested, we have expected to see the promised land on the other side. However, all too often it has been just another range of mountains.

The Australia-New Zealand Banking Law Association Conference in June 2000 revealed the most recent mountain range. I wrote Part 1 of this paper in the days preceding that Conference. This paper discusses the path we have followed and the ranges we have crested. I wrote Part 2 on June 12, 2000, just after we crested the range revealed at the Conference.

---

* Professor, Bond University School of Law. This article is based in part on a paper presented at the Australian National University in 1998. Prospect Media P/L (St. Leonards 1999) published the papers from that seminar under the title "Perspectives on Commercial Law." Also, the author wishes to thank the Prospect Press for their permission to include extracts from the paper in the present article. A further version of this paper is published in 11 BOND L. REV. 178-191 (1999).

What did we see?

I. Part 1

As Banking and Finance lawyers, we are compelled in our professional role to take a materialistic view of society. Often, we measure the wealth of any person, natural or juristic, in terms of property or assets. For many centuries, assets were limited to land because of its permanence and its role in the economic and political system. Land, to lawyers, meant real property.

Historically, other types of assets were classified as personal property with dubious value. For example, one cow or one cart is very much like any other cow or cart. Thus, personal property held little value because it was easily replaceable and transient. However, personal goods with some permanence were sometimes recognized as valuable. Accordingly, gold was highly valuable since it did not rust and its supply was limited. As such, gold was recognized as an asset. But, itinerant merchants did not like to carry gold, so it became their custom to carry messages or promises written on papyrus or parchment promising to pay in gold. Hence, negotiable instruments were born. However, negotiable instruments remained outside the common law, existing only as a feature of the customary law of merchants. For centuries, gold remained the medium of satisfaction of those merchant promises. Today, however, gold has lost its role as a stable commodity.

By the end of the nineteenth century, personal property assets included not only gold, cattle and carts, but also heavy machinery and inventory. Following on the heels of the industrial revolution, the consumer revolution added motorcars, sewing machines, radios, TVs, washing machines, refrigerators, ships and aircraft to the growing list of personal assets. During the recent and ongoing technological revolution, most wealth is held in the form of intangible assets.

Laws directed towards the marshalling of assets for personal or business security must keep pace with these societal changes. Assets represent wealth, which has value as collateral for security. The law can offer a means of making wealth, represented by those assets, available for secured and even unsecured creditors. Sadly, the law has often lagged centuries behind the problem.

We started with the mortgage of land. Despite this option, people wanted to use cattle and carts as security. Because of the transience of these assets, the law, in its attempt to protect creditors, allowed creditors to take possession of such assets so that

the owner could not dispose of the collateral. Thus, the pledge or pawn was born.

With the growth of commerce and corporate entities during the nineteenth century, companies produced the bill of sale and the charge. The consumer revolution and the ingenuity of lawyers produced a host of new devices based largely on some form of title retention. These new devices included such things as the conditional sale, hire purchase and *Romalpa*. A body of common law emerged from these concepts.

As previously noted, intangibles now represent the bulk of personal assets. Some thirty years ago, I was confronted with the problem of evaluating intangibles for security purposes.[1] I once advised a business that did much of its trade on credit terms, and hence had a large value of accounts receivable. When I suggested to the business' bank that the accounts receivable could stand as security for loans, I was met with a disgusted snort. The bank considered these "fugitive assets!"

The theme of this paper is that we have at last emerged from the limited view of the value of personal property. Today, we are faced with the challenge of bringing the law into line with the contemporary needs of society. Fortunately, models from other common law countries such as the United States, most Canadian Provinces, and most recently New Zealand, can guide our steps.[2] For many years, there has been a reluctance to follow North American models because of their seeming irrelevance to laws and financial practices in Australia. Most recently, however, the emergence of New Zealand's model combined with the whispers that reform may become a real issue in England, caused reconsideration in Australia.

A. The Case for Reform

The key word for most reformists today is "Globalisation." This connotes that we now live in one world and that there should be an end to national frontiers, which act as barriers to the free flow

1. "Intangibles" include not only accounts receivable, but also any form of intangible property that has a monetary value. Generally, intangibles include stocks, shares, debentures, negotiable instruments, letter of credit rights, and all forms of intellectual property.

2. The United States uses Article 9 of the Uniform Commercial Code. U.C.C. § 9-101 - § 9-507 (2001). The Canadian provinces of Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, New Brunswick, Nova Scotia, NW Territories, and Yukon Territory have security legislation based on Article 9 of the United States U.C.C. New Zealand has the Personal Property Securities Act 1999.

of people, money, goods, ideas, technology and services. The move to the free flow of services must include legal services, despite the difficulties that might arise from the different laws and cultures of other countries. However, the General Agreement on Trade in Services ("GATS") has this under review.

For those of us who live and work in Australia, it is not clear whether this dilemma is a matter of laughter or tears. In Australia, we have six state jurisdictions, two territorial jurisdictions and a federal jurisdiction, all of which derive their roots and legal culture from England. Nonetheless, the laws in these territories are distinguishable from one another, particularly in the law of securities over personal property.[3] To explain this phenomenon one must ask what we mean by the expressions "personal property" and "security."[4]

Today in Australia and in England, security remains the security of the sewing machine age.[5] The accepted forms of security over personal property are still the chattel mortgage or charge, the pledge, and various forms of title reservation. But, there is an additional problem in common law jurisdictions such as Australia, which do not have a *numerus clausus*—a closed list of securities. The problem is diversity and innovations. Australia does have some legislation that originated in England during the sewing machine age providing for instruments such as bills of sale, hire-purchase and chattel securities. But, there are many local variations to this legislation based on cultural or commercial habits within Australia.

The major difficulties go back to the age when cattle were used as security. Cattle and other movables could, and often did, cross borders. Often, problems arose as to the recognition of foreign securities. Complicating the issue further, movable personal property implicates all the problems associated with conflict of

3. *See* CRAIG WAPPETT & DAVID E. ALLAN, SECURITIES OVER PERSONAL PROPERTY, Chapter 2, (Buttersworth, Syndey 1999).

4. Professor Sir Roy Goode of Oxford University and I crossed swords on this issue some years ago in a Monash University Law Review. *See* David E. Allan, *Security: Some Mysteries, Myths, & Monstrosities*, 15 MON. U.L.R. 337 (1989); *see also*, Roy Goode, *Security: A Pragmatic Conceptualist's Response*, 15 MON. U.L.R. 361 (1989).

5. In England, the 1989 Diamond Report issued an article titled, *A Review of Security Interests in Property* (HMSO), which strongly urged the reform of English law on security over personal property. This article called for a law similar to Article 9 of the U.C.C. Despite the rumours, no action has been taken to implement these laws. *See* David E. Allan, *Personal Property Security - Rip van Winkle Awakes in the Antipodes* 13 J.I.B.L. 1 (1989).

laws. These problems are enhanced in today's marketplace of intangible assets.

The problems associated with movable assets are most acute in federal jurisdictions such as the United States, Canada, and Australia. For more than forty years, America has had Article 9 of the Uniform Commercial Code. Canadian Provinces, on the other hand, have a choice between the models of the Personal Property Security Acts of Saskatchewan and Ontario. The UK, as a non-federal jurisdiction, has felt no urgency to reform secured transactions law, although its current dalliance with federalism may produce some change. Additionally, New Zealand passed an Act in the closing stages of 1999. If closer economic relations with New Zealand mean anything, given the ease with which all forms of personal property can bridge the Tasman, this should operate as a spur to reform in Australia. The fact that our conflicts of laws provide a rich hunting ground for many practicing lawyers is no justification for its retention.[6] Fortunately, this is now recognized by most of the Australian legal community.

B. The Australian Story

The Australian story began in New Zealand in 1964, when Professor Byron Sher of Stanford University and I conducted a study of the problem in that country.[7] Upon my relocation to Tasmania in 1966, I conducted a similar study in Australia.[8] The studies culminated in 1971 with a series of reports by state committees during the late 1960's on reform of consumer credit laws. In addition, the studies included a report from the Committee of the Law Council of Australia.[9]

It seemed that the time was ripe for reform. Thus in 1972, as Dean of the Monash Law School and with the support of the Law Faculty, I convened a national conference in Melbourne to consider national law reform in this area.[10] Unfortunately, the Conference

6. One needs to distinguish the repetitive and lucrative work, which threatens the reform from the creative financing techniques that have been produced to meet quite different needs. The latter are not under challenge.

7. *See* Byron Sher & David E. Allan, *Financing Dealers' Stock-in-Trade*, 1 NZULR 371 (1965).

8. *See* David E. Allan, *Stock-in-Trade Financing*, 2 U. TAS. L. REV. 383 (1966).

9. *See* Molomby Committee Report on Fair Consumer Credit Laws, (1972).

10. *See* DAVID E. ALLAN, CONSUMER CREDIT—THE CHALLENGES OF CHANGE, (CCH Australia Ltd, Sydney) (1972).

failed to fulfill our hopes and expectations. It attracted strenuous opposition from the Australian Finance Conference, which then represented non-bank financing institutions, on the grounds that financers were familiar with the existing system. The result was a negotiated compromise that finally emerged in the form of the *Chattel Securities* legislation. Like all compromises, it satisfied only a few and served only to add further complexity and diversity to this area of Australian law. For the next twenty years, the only pressure for reform came from academics.

In 1992, the Australian Law Reform Commission produced a Report and draft bill. The Report, however, was not acceptable to most areas of the banking, finance, and legal sectors because it paid insufficient regard to the practical aspects and problems of financing in Australia. So, the pressure continued at an academic level.

In 1995, the Australian Department of the Attorney General sought to revive the 1972 issues and controversies through a Discussion Paper. I convened a national workshop at Bond University in December, 1995 that met for four days to debate the issues. Governments, universities, banks, non-bank financial institutions, traders, consumer interests and the private legal sector were represented. Also present were representatives from overseas, including the United States, Canada, New Zealand and the European Bank for Reconstruction and Development, which had just completed drafting a new security law for the former socialist states of Central and Eastern Europe. The Workshop considered an Issues Paper, which identified eleven issues that we would have to resolve to determine the case for reform and its content. Almost all parties agreed to the issues that are set out in the Report of the Workshop.[11]

C. Summary of the Workshop

There was complete agreement among the participants on the following issues:

- For a broad range of reasons, reform of personal property security laws in Australia is both desirable and necessary.

11. Professor Tony Duggan, from the University of Toronto, and I prepared the Issues Paper. Professor Ross Buckley of Bond University prepared the Final Report. Neither the Issues Paper nor the Final Report has been published, except to those who attended the Workshop. Only a shortened summary of each appears in this Article.

- Securities given by non-corporate entities, as a matter of principle, should be included in a new personal property security law.
- Consumer transactions should be included in the new law as a matter of principle, provided privacy issues are adequately handled.
- The inclusion of land in the new regime would not be feasible at this time. However, once the computerization of land records has been completed, the cross-referencing of land and personal property indices would be desirable. Such a cross-referencing should be for notification purposes only and not affect priorities of the land system.
- Future property and all forms of personal property should be included in the new Personal Property Security Law, which should apply to all transactions that create security interests.
- A national registration system that is searchable by both name and asset should be instituted based on electronic filing and should be accessible by computers at multiple outlets around the country.
- Whoever administers the new regime must do so as a facilitator and not in a regulatory way.
- Advanced appropriate search logic is vital.
- There is no substantive reason for including a reference to stamp duty on the financing statement.
- The registration of agreements is not desirable.
- A compensation scheme would add credibility to the new law.
- A super-priority purchase money security interest is necessary for commercial efficacy.
- The approach to future advances in the ALRC report is appropriate.
- In the case of security over inventory, the interest of the buyer who bought property from the seller in the ordinary course of the seller's business should prevail over the interest of a secured creditor, regardless of registration because of the licence to deal given by the creditor.
- The date of the transaction should not be included in the financing statement because it generates additional opportunities for error and creates a lacuna in the financing statement when the filing of the statement precedes the transaction.

The Bond Workshop, as a representative forum, defined the issues and pointed the way to security law reform.

D. So What Happened Next?

Gentle persuasion led to some progress. However, the discussion needed facts, not speculation or emotion, to spur progress. Following the Workshop, there have been some encouraging developments for reform of secured transaction law.

In June 1999, the topic was on the agenda for the Annual Conference of the Australia-New Zealand Banking Law Association. By that time, a Bill had been introduced in the New Zealand Parliament. Also, the Canadian legislation received considerable acclaim and the revised and updated U.C.C. Article 9 had been completed in America. These developments were discussed at the Conference, both in the Conference session itself and at another private meeting attended by representatives from many Australian banks. These discussions revealed that opposition from the banks was based on their experiences implementing the Consumer Credit Code, and problems with the Y2K bug, GST,[12] and CLERP 6.[13] The parties reached a consensus that they would not oppose an Australian Article 9 if it could be shown that it would be cheaper, faster, simpler, easier, and safer than the present system of security. But, if this could not be demonstrated, then the reform proposal could not proceed. The challenge was too great to ignore!

The Law Council of Australia,[14] the Australian Law Reform Commission, the Australian Finance Conference, the Australian Equipment Lessors' Association, and the Australia-New Zealand Banking Law Association agreed to cooperate on reform. They have been assisted, although without commitment to any outcome, by the Business Law Division of the Federal Treasury and by the Australian Bankers Association.

All parties agree that reform cannot proceed without total industry support. Therefore, the problem is how to persuade banks, industry, consumer interests and governments that this new proposal will make financing cheaper, faster, simpler, easier, and safer.

To meet this challenge, the Banking Law Association established a new committee, which represented the finance

12. The Federal Goods and Services Tax introduced July 1, 2000.

13. The Federal Corporate Economic Reform Program. Chapter 6 is concerned with the Reform of Financial Services.

14. The Law Council is the peak federal body of Australian lawyers.

industry and consumer interests.[15] I, as Chairman and Craig Wappett[16] as Vice-Chairman, along with financial assistance from the Banking Law Association, arranged for the drafting of an appropriate Australian version of Article 9. Harry Sigman, one of the draftsmen of the revised Article 9, came to Australia to assist with the drafting. Also, a representative of the Resource Group of lawyers was present to provide continuous advice to the writers on the acceptability of their draft to Australian conditions.

A draft Bill was created with the aid of the Resource Group and the Committee. The draft Bill is in Australian format and language, and addresses Australian financing techniques and problems and implements the fundamental and applicable concepts of U.C.C. Article 9 as approved by the Bond Workshop. A Policy Guide, a Question and Answer Marketing Document and a document setting out a number of typical financing transactions accompanied the Bill. Moreover, the Bill contained sample forms and a cost comparison under the existing law and under the proposed law.[17]

The real public evaluation, aimed particularly at participants with hands-on experience with the various financing arrangements contemplated by the new law, came at the annual conference of the Australian Banking Law Association in June 2000. The project was given three sessions at the Conference. The first session was devoted to the New Zealand Act and its implications for Australia. The second session discussed five concurrent workshop sessions,[18] each looking at the implications of the draft Bill for a specific type of financing. The final session dealt with reports from the other Workshops.

15. The new committee replaced the Business Law Section of the Law Council of Australia, which was headed by Rowan Russell of Mallesons Stephen Jaques.

16. Craig Wappett is a partner at Mallesons Stephen Jaques, which is based in Brisbane, Australia. Craig Wappett has considerable experience with the Canadian system.

17. The Bill was also intended to be sent to the federal Treasury and the Productivity Commission for a comparative cost/benefit analysis with the present situation. However, as a result of the problems with the Corporations Law, which resulted from the recent decision of the Australian High Court in *The Queen v. Hughes,* 74 A.L.J.R. 802 (2000), the Treasury and the Productivity Commission could not undertake this task at this time. Nevertheless, we are planning to have a comparative cost/benefit analysis done privately.

18. Separate Workshops were set up for New Zealand, Corporate Finance, Consumer Finance, Equipment and Inventory Financing, Accounts Receivable and other Intangibles.

II. Part 2: The Australia-New Zealand Banking Law Conference of 2000

The Conference was well attended. One hundred and eighty-six delegates, consisting mainly of private sector lawyers, bankers and bank counsel attended. Also in attendance were six students from Bond University Law School, who assisted me and the Chairpersons of the Workshops.

In my opening address at the Conference, I made clear the following:

1. That the purpose of the conference was to achieve a consensus on establishing a cheaper, faster, easier, simpler, and safer means to security law;
2. That we were concerned not with drafting but with policy, and thus, more focused on the concepts, systems, and procedures;
3. We acknowledged that the draft was not suitable as a final draft, even if the policies it enshrined were approved, and we intended to redraft the Bill in light of the comments and suggestions made at the conference;
4. We were not committed to an American, Canadian or New Zealand approach, but would produce an acceptable Australian final draft;
5. Our discussions should be practical and not theoretical, and that we looked to the participants for their frank views and experience;
6. If we achieved a consensus on the need for reform and upon our broad approach, then there was still a lot of work to be done.

Namely, we had to redraft the Bill, design a filing system, both national and electronic, and resolve the constitutional problems affecting the implementation of the legislation, which resulted from the High Court decision in *The Queen v. Hughes*.[19]

The first Conference dealt with a paper on the New Zealand Act and its implications for trans-Tasman trade and finance.[20] The paper acknowledged that the New Zealand Act had some imperfections and that it had not yet been proclaimed. It envisaged an amending Bill, primarily to give effect to the 1998 amendments

19. 74 A.L.J.R. 802 (2000).

20. Mark O'Regan and Matt Yarnell of Chapman Tripp, Wellington, and New Zealand issued the paper. Steve Edwards, the Associate Legal Director of the Australian Finance Conference, gave the Australian commentary.

to the U.S. U.C.C. Article 9. The New Zealand Conference stressed the need for further revision of the New Zealand Act to deal with the problem of intangibles.[21]

The five Workshop sessions[22] were held on the afternoon of the first day. The Chairmen were told specifically that their task was to seek a consensus on approval of the reform policy and that they could call on the assistance of a specially established Resource Group to that end.[23]

The Corporate Finance Workshop,[24] after considering the application of the Bill to several topics such as book debts, *Re Chargecard*,[25] accounts, contracts and priorities, reported that reform was desirable.

The Consumer Finance Workshop[26] did report some problems about reconciling the draft Bill with the Consumer Credit Code and with important issues such as privacy. However, assurances were given that these problems would be tackled on the redrafting of the Bill. The Equipment and Inventory Finance Workshop[27] expressed support for the concept, but was hesitant about several particular aspects that they thought should be further considered on the redraft. The Accounts Receivable and Other Intangibles Workshop[28] also experienced difficulty. Some members of the Workshop concentrated on policy rather than drafting and others were concerned with the New Zealand Act. Specifically, some thought the New Zealand Act, in spite of the absence of the

21. Laurie Mayne of Russell, Mcveagh, Auckland, Chaired the group. Glen Lovell of Bond University Law School assisted.

22. This article only briefly summarizes the Reports of the Workshops.

23. The Resource Group consisted of myself, Craig Wappett, Mark O'Regan, Jacqueline Lipton of Case Western Reserve Law School, Marion Hetherington of the Commonwealth Bank of Australia. Tim Jay of the Bond University Law School assisted the group.

24. Chaired by David Turner of the Commonwealth Bank of Australia and assisted by Debra Anderson of Bond University Law School.

25. *See* Re Chargecard Services Ltd, 1 Ch. 497 (1989) (holding that a bank could not take a charge over a customer's deposit). However, the House of Lords in *Re Bank of Credit & Commerce International SA* (No.8), 4 All E.R. 568 (1997), overruled *Re Chargecard Services Ltd.* The Australian courts have not had an opportunity to reconsider the rule, but the draft of the Australian Bill does reverse it.

26. Chaired by Elizabeth Lanyon of the Banking Law Centre of Monash University assisted by Bill Tomlinson of Bond University Law School.

27. Chaired by Steve Edwards, Associate Director Legal of the Australian Finance Conference assisted by Darren McClafferty of the Bond University Law School.

28. Chaired by Professor Ralph Simmonds, Dean of the Law School at Murdoch University assisted by Fiona Graham of the Bond University Law School.

"control" concept, conveyed the basic ideas much more clearly and that following Article 9 could cause new problems.

At the end of the day, four of the five workshops were in favor of reform. The fifth workshop failed to reach consensus primarily because of disagreements over drafting. The dissenters, however, overemphasised the drafting problems, which the Australian draft still needed to resolve.

On the afternoon of the last day, the Workshop Chairpersons reported to the plenary session. It was my task to sum up the work and present conclusions. We made a bad mistake by leaving this task until the final Friday afternoon.[29] Although 186 registrants attended the Conference, there were less than fifty registrants present at the final session. Most likely, those that were absent had family engagements for the weekend that required them to catch afternoon planes. The Chairpersons fully and fairly reported the views of their Workshops, including criticism and dissent, as this plays an important role in guiding our future steps.

In summing up the Workshops, I stressed that U.S. and Canadian models of personal property security law had existed for many years. Both the U.S. and Canadian models were good, but they lacked the cogency that proximity provides. The record shows that wherever security systems of this type have been adopted, litigation decreased, paperwork dwindled, while advisory opinions and planning prospered. Personally, I did not think that this was a bad result, but it became clear that not everyone agreed with me.

Even though we had a very good New Zealand draft in accordance with long-standing New Zealand standards, there were some faults that we needed to address before completion. I stressed that now we should concentrate on the underlying concepts and systems, rather than any particular draft. I promised a new Australian draft in light of the discussions at the Conference. We would then submit to a comparative cost/benefit analysis with the present law. Next, we would need to design the national electronic filing system to overcome the implementation problems resulting from the *Hughes* decision. Following the meetings, there were some perfunctory discussions. However, it was clear that among the remaining participants, there was no groundswell of support for reform.

29. This was Queen's Birthday Weekend celebrated over much of Australia.

III. Conclusion

A. So what do we conclude?

First, the result, or rather lack of result, was a disappointment. Leading up to the Conference there had been a large measure of enthusiasm by the presenters, assistants, and others with whom we discussed our ideas. As I indicated above, we made a bad mistake by seeking an enthusiastic endorsement of our views. Furthermore, we made a mistake by seeking a consensus from the final session of the Conference after three-quarters of the participants had departed. However, many of the presenters and assistants thought that we expected too much when we looked for an enthusiastic endorsement.

Generally, three issues destroyed the enthusiasm of the conference. First, the dependence of our proposal on new technology destroyed the enthusiasm because not all of our audience was happy with the electronic world. Second, the amount of baggage that many of the participants already carry such as the Consumer Credit Code, GST and CLERP6 dampened enthusiasm for reform.[30] Third, some viewed the dwindling amount of litigation, paperwork, advising and planning as, sadly, a negative result of reform. Inevitably, we are entering a new world that requires new laws and lawyers who can continue to provide important legal services. We must build upon the generally accepted realization that reform, along the lines proposed, is inevitable.

B. So where do we go now?

We must, at all costs, hold to the consensus that we already have. For some, this is limited to a consensus as to the inevitability of reform. For many others, agreement goes beyond the inevitability of reform to recognition that personal property security is appropriate for the world we are entering. To hold the consensus, we must complete the comparative cost/benefit analysis and confirm that the new laws will be cheaper, faster, easier, simpler, and safer than anything we have presently. At the same time, we should proceed to design and cost the national electronic filing system.[31]

30. The Federal Goods and Services Tax introduced July 1, 2000.

31. It will be essential to demonstrate that the savings in operational costs will rapidly cover the capital costs of creating and installing the electronic filing system.

Additionally, we must overcome the difficulties created by recent High Court decisions, which make it necessary to find a new and effective constitutional platform to regulate matters, such as personal property law reform that fall within both federal and state competence. This last difficulty raises the possibility of another workshop at the Bond Law School during 2001. Another workshop would enable the Standing Committee of (federal, state and territory) Attorneys General and the Law Reform Agencies of these jurisdictions to meet together with selected experts in the area of constitutional law. These experts should seek a solution to the most serious problem facing Australia in the field of corporate and commercial law—enabling the federal government to legislate in the field of national as well as international commerce. The pressure for reform must come not only from constitutional lawyers and corporate lawyers, but also from banking and finance lawyers. It must happen NOW!