PUBLIC REGISTRATION OF SECURITY INTERESTS IN PERSONAL PROPERTY:
SOME RECENT CANADIAN DEVELOPMENTS

By R. C. C. CUMING, Q. C.,
Professor of Law,
College of Law, University of Saskatchewan,
Saskatoon, Saskatchewan, Canada

for the

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Introduction

The purpose of this paper is to examine Canadian developments in personal property security law, particularly those aspects designed to provide public access to reliable information concerning the existence and nature of security interests in personal property. Attention is focused on the recently-enacted Personal Property Security Act of the province of Saskatchewan and the registry system established under its authority primarily because of the innovations in legal framework and administrative structure introduced through this legislation.

The Canadian Constitution allocates to the provinces primary jurisdiction over property matters. As a result each province has its own system of law for determining rights in property; and, as one might expect, there are major differences among the various systems. Consequently,
with one important exception, it is not possible to talk about a Canadian public registry system for security interests in personal property. While major efforts have been undertaken to obtain uniformity of provincial legislation, Canadians have been much less successful than Americans in securing adherence to a single, uniform set of laws dealing with security interests in personal property. In recent years, three provinces and one territory have enacted revised personal property security legislation along with modern, computerized, personal property security registry systems. However, the new legislation and registry systems differ greatly one from the other in a few major respects and in many minor respects. The differences are not primarily the product of divergence of views as to what type of system is the best. The result from the fact that a great deal of experimentation has been going on in this area of the law, and innovations are being introduced at a unprecedented rate. These innovations are not confined to the technological aspects of public registries, although some of the more dramatic ones are associated with the rapid development of computer technology. Innovations in approach are also involved and some of the old assumptions which in the past shaped this area of the law are being set aside or substantially modified.

The impetus for change in Canadian personal property security law began to develop in the early 1960's. While the then existing personal property security law in the common law jurisdictions of Canada was considerably more suited to modern business financing than was law in most jurisdictions in the United States prior to the adoption of Article 9 of the Uniform Commercial Code, nevertheless, it was not free from anomalies.

3 The Federal Parliament of Canada has legislative jurisdiction over banks and banking. See Constitution Act 1867, s. 91(15). In exercise of this jurisdiction, Parliament enacted banking legislation which provides for a statutory form of security interest available to chartered banks only. See Bank Act, Stat. Can. 1980, c. 40, ss. 178-180, 186.

4 Much of this effort has come from the Uniform Law Conference, an association of provincial officials established in 1918 for the purpose of promoting uniformity of legislation in the provinces. In 1931 federal representatives joined the Conference. The Conference has prepared and published several pieces of legislation dealing with personal property security interests, including the following: Conditional Sales Act 1922, Bills of Sale Act 1928, Assignment of Book Debts Act 1928, Corporation Securities Registration Act 1931, Personal Property Security Act 1971, Personal Property Security Act 1982.


6 See generally, CUMING, Second generation personal property security Legislation in Canada, supra footnote 1.

7 The pioneering efforts to reform this area of the law were undertaken by the Ontario Commercial Law Section of the Canadian Bar Association in 1960.
and deficiencies. The need to modernize this area of the law was widely recognized. A major motivation of those advocating change was to have available a modern, efficient and rationalized registry system for security interests in personal property. Canadian common law jurisdictions have had long experience with public registry systems for security interests in personal property. However, apart from the replacement of regional registries with centralized provincial registries in some provinces, few major changes had been made in registry systems during this century. By the mid-1960's, a committee of the Ontario government and a committee of the Canadian Bar Association were urging reform of basic personal property security law and accompanying registry systems. Those who sought change in this area of the law were heavily influenced by Article 9 of the American Uniform Commercial Code. This influence could be seen more in the proposals for change in the structural framework of personal property security law than in proposals for change registry systems. The concept of notice filing which is central to the Article 9 registry systems was not unfamiliar to Canadians. It has been for many years a feature of the specialized federal personal property security system established for the Canadian chartered banks. Canadian reforms, were, however, very enthusiastic about the possibility of having a Canadianized Article 9 along with a modern, computerized system for registration of security interests.

The first Canadian Personal Property Security Act which married the conceptual framework of Article 9 to a computerized registry for security interests came into operation in the province of Ontario in 1976 after a long period of delay produced by technological difficulties associated with the registry. The second Personal Property Security Act came into effect in the province of Manitoba in 1978. While the substantive law contained in the Manitoba Personal Property Security Act was very similar to that of the Ontario Act, the Manitoba registry was free from some of the more significant deficiencies of the Ontario system. In 1981, the Saskatchewan Personal Property Security Act was passed. This legislation can be described as a new generation of personal property security law in that it contains features which are designed not only to effect technological

8 The first legislation in colonial Canada providing for the registration of chattel mortgages was enacted in 1949. See An Act requiring Mortgages of Personal Property in Upper Canada to be filed, 1849, 12 Vict. c. 71.
9 In 1963 the Canadian Bar Association established a national committee to develop model personal property security legislation for adoption by all jurisdictions in Canada. In 1982, it published jointly with the Uniform Law Conference of Canada a Model Uniform Personal Property Security Act.
10 A notice registration system for security interests has been a feature of Bank Act security interests since 1923. See The Bank Act, Stat. Can, 1923, c. 32, s. 88A. Now see supra footnote 3.
11 See supra footnote 5.
12 See supra footnote 5.
13 See supra footnote 1.
improvements which eliminate many of the problems encountered in the operation of the other two registries, but in addition to introduce a number of innovations in the underlying substantive law which enhance the usefulness of a computerized registry system. The drafters of the Saskatchewan Act had the good fortune to be able to draw on the experience of Ontario and Manitoba and had available to them a vast body of recorded knowledge as to the strengths and weaknesses of Article 9.

It should not be assumed that the author is holding the Saskatchewan Personal Property Security Act out as the apex of development of personal property security law in Canada. It is just one more step along the path of reform. It is an experiment from which system designers and legislative drafters will acquire valuable information to be used in planning for modernization of personal property security law in other Canadian jurisdictions.

I Background

The historic development of personal property security law, particularly chattel mortgage law, of common law jurisdictions in Canada provides an explanation as to why a legislative scheme patterned on Article 9 of the American Uniform Commercial Code has found ready acceptability in several Canadian jurisdictions. Canadian Personal Property Security Acts patterned on Article 9 of the Uniform Commercial Code embody policies which in broad terms were current in Canada well before the beginning of this century. Canadian legal history also explains why Canadian law makers are keenly aware of the benefits of flexible security arrangements and the need for public access to information concerning security interests.

Initially, the laws of England's common law colonies in North America were merely extensions of English law however, by the middle of the Nineteenth Century the chattel mortgage law of Upper Canada was beginning to take a separate path. In 1849, a chattel mortgage registry system was established. By this time the common law hostility to chattel mortgages under which the debtors remained in possession of the property mortgaged, for all practical purposes had disappeared. Mortgages on present and after-acquirer stock in trade were in common use as a method of financing business inventories. This was made possible because the Canadian courts were prepared to recognize the validity of equitable mortgages on after-acquired property.

14 For a description of security devices used in Quebec, a civil law jurisdiction, see generally, MacDonald and Simmonds, "The Financing of Moveables: Law Reform in Quebec and Ontario" (1980), 11 Revue de Doit, Université de Sherbrooke, 45.
15 See An Act requiring Mortgages of Personal Property in Upper Canada to be filed, 1849, 12 Vict. c. 74.
16 See e.g. Baldwin v. Benjamin (1859), 16 U.C.Q.B. 52 at 56-57.
17 See Dickey v. Ashdown (1889) 17 S.C.R. 227 per Gwynne J. at 244-245.
18 See e.g. Clark v. Scottish Imperial Insurance Co. (1881) 4 S.C.R. 192. This
Since the 1849 Chattel Mortgage Act made no provision for registration of mortgages on after-acquired property, and important deficiency in the public notice system existed. This deficiency was eliminated in Ontario in 1892 with the enactment of provisions requiring the registration of chattel mortgages on property acquired by mortgagors after execution of their mortgages. However, this was not validating legislation. It was well-established at the time that since such mortgages were not within the scope of the unamended Act they were valid without registration.

The general attitude toward the use of chattel mortgages on stock-in-trade to secure business debt displayed by Canadian courts and legislatures appears not to have been influenced significantly by developments in either England or the United States. The English Bills of Sale Act of 1882 requires that every bill of sale be in the statutory form as set out in a schedule which, with minor exceptions, contemplates only a present assignment of things capable of being specifically described in the deed. A mortgage on specified existing property and future property is void for non-compliance with the Act, even against the grantor. Canadian courts were quick to recognize the fundamental difference between the public policy underlying the English legislation and that underlying Canadian Bills of Sale legislation. While chattel mortgages ceased after 1882 to be available in England as a financing device for unincorporated business enterprises, they continued to be used on a significant scale in Canada for this purpose.

The amendment to the Ontario Bills of Sale Act which provided for registration of mortgages on existing and after-acquired property embodied the conclusion that the public was adequately protected by public registration of mortgages on the inventory of tradesmen or manufacturers; nothing further was required. At the same time a very different attitude prevailed in the United States. In 1874, the Supreme Court of the United States equitable principle was settled in the English House of Lords decision in Holloyd v. Marshall (1869) 10 H.L.C. 191. It was enunciated by Lord Westbury:

"But if a vendor or mortgagor agrees to sell or mortgage property, real or personal, of which he is not possessed at the time, and he receives the consideration for the contract, there is no doubt that a Court of Equity would compel him to perform the contract, and that the contract would in equity transfer the beneficial interest to the mortgagor or purchaser immediately on the property being acquired." pp. 219-220.

19 See 1892, 55 Vict. c. 26, s. 1. This type of provision became standard in most other Canadian jurisdictions shortly thereafter and was embodied in the Uniform Bills of Sale Act, 1928, s. 2.

20 R.S.O. 1857, c. 125.


22 Bills of Sale Act (1878) Amendment Act, 1882, 45 & 46 Vict. 155, c. 44.

23 Ibid., ss. 4, 6. The Act does not apply to mortgages given by corporate debtors. See s. 17.


confirmed a long standing judicial hostility to this type of mortgage. The objection was not grounded on a refusal to recognize the validity in equity of a mortgage on after-acquired property; it was based on the assertion that there was something fraudulent about allowing a mortgagee to have a mortgage on inventory which the mortgagor can, within wide limits, treat as his own by selling it in the course of his. The effect of such a mortgage if recognized as valid would be to shield the mortgagor’s assets from the reach of his other creditors. Although the validity of mortgages on inventory was ultimately accepted in some jurisdictions in the United States, this recognition never became universal. The need which mortgages were allowed to fill in Canada was ultimately filled by other security devices in the United States.

Another feature of Canadian chattel security law which has facilitated the acceptance of legislation patterned after Article 9 of the American Uniform Commercial Code was the availability of the English floating charge as a method of providing long term secured financing for incorporated businesses. The debate among experts as to the essential nature of a floating charge which began shortly after this peculiar type of security arrangement was first recognized during the last quarter of the 19th century has not inhibited the usefulness and popularity of this device in Canada. Any attempt to define or even describe a floating charge involves taking sides in the debate. For the purposes of this paper it is enough to describe in functional terms what can be accomplished though the use of a floating charge. Under a security agreement creating a floating charge, the charge holder can have an “equity” in all present and after-acquired property of the debtor which will become a specific charge when crystallization occurs. Generally the charge crystallizes when the debtor is in default or ceases to carry on business. Since the charge remains non-specific until crystallization, the debtor is generally free to carry on business and in so doing,

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28 Ibid., at pp. 42-45.
29 Ibid., at pp. 45-47.
30 On one side are those who argue that prior to crystallization a floating charge creates a defeasible equitable interest. See e.g. Farrar, World Economic Stagnation puts the Floating Charge on Trial” (1980) 1 Company Lawyer 83. On the other are those who contend that an uncrystallized floating charge passes no proprietary interest to the charge holder. See e.g. Gough, Company Charges 1978, pp. 71-76 and 118-119.
31 Conceptually, an interest arising under a floating charge does not fit the pattern prescribed for all security interests under the new Personal Property Security Acts. A security interest under the legislation comes into existence as a fixed interest as soon as the debtor gets an interest in the collateral to which it attaches. The interest arising under a floating charge is non-specific. See generally, Gough, supra footnote 30; Cuming, Second generation personal property security legislation in Canada, supra footnote 1, at pp. 7-14; Ziegel and Cuming, The modernization of Canadian personal property security Law, supra footnote 1 at pp. 267-270.
to deal with its property without the concurrence of the charge holder, subject only to certain restrictions relating to the creation of other security interests in the property charged. 32

There is reliable evidence to indicate that floating charges were in use in central Canada shortly after the turn of the century. 33 The popularity of this form of security agreement grew rapidly and continues unabated. The reason for this is obvious. 34 Not only does the floating charge provide effective security to the charge holder against the trustee in bankruptcy, but in addition it provides the widest possible measure of freedom to the debtor to carry on business as though its assets were not encumbered. 35 Added to this is the fact that the public registration requirement associated with this type of security have traditionally been minimal and inexpensive. 36

It has long been recognized that the principles underlying the validation of security interests in acquired tangible personal property apply as well to intangible property. 37 As a result, assignments of debts, both present and future have long been used as a method of securing business debt in Canada. It was the general refusal on the part of American courts to

32 See generally, Gough, Company charges, 1978; Pennington, The genesis of the floating charge (1960), 28 Mod. L. Rev. 630.
34 Dr. Gough contends that the reason for the initial creation and subsequent attractiveness of the floating charge is the conceptual impossibility of having a specific equitable mortgage on present and after-acquired stock of a business debtor which gives to the mortgage a power to deal with the stock in the ordinary course of business. See Gough, Company charges, 1978, pp. 127-135. There is no basis in Canadian law for this conclusion. Canadian courts have consistently recognized the validity of this type of mortgage. See, e.g., Dedrick v. Ashdown (1881) 5 S.C.R. 217; Royal Bank v. Brunswick Ford Sales Ltd. (1978) 22 N.B.R. (2d) 52 affirmed 26 N.B.R. 2d 78 (C.A.).
35 Generally a floating charge is taken on the non-fixed tangible and intangible assets of a company and a specific mortgage is taken on its fixed assets.
36 The first statutory registry requirements directly applicable to floating charges which attached consequences to non-registration were included in The Dominion Companies Act in 1917. See Stat. Can. 1917, c. 25, s. 9. Failure to register the charge with the secretary of state rendered it void against a liquidator or creditors of the debtor company. In 1934 the federal legislation was amended to provide that failure to register the charge did not affect its validity. See, R.S.C. 1934, c. 55, s. 65. The Supreme Court of Canada ruled in 1927 that floating charges were "mortgages" to which the Ontario Bills of Sale and Chattel Mortgage Act R.S.O. 1914 applied and as such were void as against subsequent purchaser, mortgagees and creditors of the debtor if not registered. See Gordon Mackay v. Larocque [1927] 2 D.L.R. 1150 (S.C.). Shortly thereafter, the Ontario Legislature enacted the Corporations Securities Registration Act, Stat. Ont. 1922, c. 50 which provided a registry system for all "corporate securities" and which was much easier to comply with that of the Bills of Sale Chattel Mortgage Act. The Ontario Act was patterned after the Uniform Corporation Securities Registration Act 1931 which was later adopted in several other jurisdictions.
37 See Taliby v. Official receiver (1888) 1 App. Cas. 529.
recognize the validity of flexible financing devices. Much of the flexibility and certainty in general accounts financing which can be attributed to specific legislative measures adopted in American states beginning in 1943\(^3\) was available to Canadian financiers many years earlier.\(^3\)

A causal observer may well be puzzled as to why American personal property security legislation has had such influence in Canada. It was the general refusal on the part of American courts to recognize the validity of flexible financing devices such as equitable mortgages on after-acquired stock and trade, floating charges and, assignments of future accounts that created a demand in the United States for legislative intervention to accommodate the law to modern business practices. Conditions have been very different in Canada. Canadian courts with the complicity of Canadian legislators have generally displayed a willingness to respond to the needs of the business community in this regard. The drafters of Article 9 of the Uniform Commercial Code had nothing to teach Canadians when it came to the development of legal devices designed to permit security interests in non-fixed business assets.

Article 9 of the Uniform Commercial Code was attractive to Canadian lawmakers because it provided a unified and rationalized structure for the types of security devices which were well established in Canadian law through the use of a single, flexible, generic concept: the security interest. The drafters of Article 9 adopted and refined the equitable principles established by the House of Lords' decision in Holroyd v. Marshall,\(^4\) and applied them a set of commercially rationalized priority rules. In turn, Canadian legislators have adopted the innovations which Article 9 offered and have taken the process of development one step further by designing modern, sophisticated, registry systems which accommodate the new personal property security law.

\(^3\) See generally, Gilmore, supra footnote 27, pp. 250-286.

\(^4\) See, e.g., Eby-Blain Co. v. Montreal Packing Co. (1908), 17 O.L.R. 292 (C.A.) The impetus for enactment of provincial legislation providing for registration of general assignments of accounts (book debts) came in 1919 with the enactment of the Bankruptcy Act Stat. Can. 1919, c. 36. Under section 30, a general assignment of book debts made by a person engaged in a trade or business was void against the trustee in the bankruptcy of the assignor unless the assignment was "registered pursuant to any statute of any province providing for the registration thereof." The Supreme Court of Canada ruled that the lack of a provincial registry statute was no excuse. See Re Inverness Railway and Collieries Ltd: Royal Bank v. Eastern Trust Co. [1923] S.C.R. 177. Shortly thereafter, provincial registry statutes were enacted. See e.g. Assignment of Book Debts Act, Stat. Ont. 1923, c. 29.
II. Features of Modern Canadian Personal Property Security Law —
With Special Attention To Registry Systems

1. Some Unintended Consequences of Unification

A feature which distinguishes modern Canadian personal property security law from that which it displaced is its conceptual and structural unity. Prior law required separate identification of different types of security interests for the purposes of determining applicable priority rules and the appropriate registry. For example, a mortgagee’s interest was required to be registered in a registry different from that of a conditional seller’s interest. Fragmentation based on the type of collateral was also characteristic of the former law. Security interests in intangibles had to be registered in one registry, while security interests in chattels were registered in other registries.

The only situation in which it was possible to effect one registration of a security interest in more than one type of collateral was where a floating charge corporate security was involved. Canadian Personal Property Security Acts, adopting the basic structure of Article 9 of the Uniform Commercial Code, provide a uniform structure including a single set of priority rules with appropriate refinements to deal with specialized situations and a single registry system for all security interests.

The effects of this unification are far-reaching. It is now possible for a secured creditor to take a security interest in the great bulk of a debtor’s present and after-acquired personal property and to perfect that interest by registering a simple document in one registry. No longer is it necessary to identify the nature of the interest taken or to select the appropriate registry from three or more possibilities. The cost of taking and perfecting

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44 See supra footnote 42.
45 See, e.g. The Corporation Securities Registration Act R.S.S. 1978, c. C-39. One of the difficulties with this legislation was that there was no clear understanding as to its scope. See, e.g. Turf Care Products Ltd. v. Crawford’s Mowers and Marine Ltd. (1978) 23 O.R. (2d) 292 (Ont. H.C.); Re Turf World Irrigation Ltd. (1980) 7 D.L.R. 215 (Ont. H.C.)
46 The Saskatchewan Personal Property Security Act, supra footnote 1, expressly allows a creditor to take and perfect a security interest in all of a debtor’s present and after-acquired personal property. See s. 10(1) and Rev. Reg. of Sask. supra footnote 1, s. 5(1) (i).
47 Some categorization of collateral remains necessary. For example, it may be important to distinguish between consumer goods, inventory and equipment. See Sask. Act ss. 2 (h), 2 (n), 2 (w), 7 (1), 31 (3); Rev. Reg. of Sask ss. 5 (1) (i) supra footnote 1.
securities interests is significantly reduced at least in situations where a security interest is taken in a wide range of collateral. What is more important is that the risk of inadvertent non-compliance with registry requirements is very significantly diminished and predictability as to the outcome of an attack on the priority status of the interest is greatly enhanced.

The improvement in the position of secured creditors, however, comes at some cost to unsecured creditors of a debtor. Under prior law, the complexities endemic to the fragmented registry systems greatly increased the likelihood that a secured creditor would fail to comply with registration or other perfection requirements with the result that unsecured creditors, or more frequently the debtor's trustee in bankruptcy, would be successful in defeating the security interest. Further, the technical difficulties associated with compliance with several sets of registry requirements discouraged some secured creditors from seeking security interests in a broad range of debtors' assets. The result was that in some cases at least, debtors had unencumbered assets which were available to unsecured creditors.

It should be noted, however, that the complexity of prior law was not the result of a conscious policy decision to give unsecured creditors an opportunity to have their claims satisfied in whole or in part ahead of secured creditors. It was the unintended consequence of primitive registration requirements. The modernization of registry systems resulting from the enactment of personal property security legislation has heavily weighed the balance in favour of secured creditors and against unsecured creditors simply by removing many of these requirements.

While the drafters of Article 9 of the Uniform Commercial Code and Canadian Personal Property Security Acts must have been conscious of the shift of advantage in favour of secured creditors and against unsecured creditors which was likely to result from enactment of the legislation, few counter-measures were adopted. All acts permit a creditor to enforce a judgment against the debtor's rights in collateral subject to a security interest. However, the secured creditor's position cannot be jeopardized by judgment enforcement proceedings. Only so long as it can be established that the value of the collateral exceeds the debt owing to the secured party can unsecured creditors expect to share in the proceeds of collateral

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49 See, U.C.C. 9-311; Ontario Personal Property Security Act, supra footnote 5, s. 33; Manitoba Personal Property Security Act supra footnote 5, s. 33; Sask. Act supra footnote 1, s. 33.
50 The Canadian legislation is quite explicit on this point. For example, the Saskatchewan Act supra footnote 1, section 33 provides that the rights of a debtor in collateral may be involuntarily transferred but "no transfer prejudices the rights of the secured party under the security agreement or otherwise, including the right to treat a prohibited transfer as an act of default."
disposition. The Saskatchewan Personal Property Security Act goes somewhat further by giving a special priority to unsecured creditors who are paid by a debtor out of liquid assets which are collateral under a security agreement and by preventing a secured party from acquiring priority with respect to future advances made when the debtor's interest in the collateral has been seized under judicial process and the secured creditor is aware of this fact. The Saskatchewan Act also gives power to an unsecured creditor who has an interest in collateral obtained through judgment enforcement measures to block surrender by the debtor of his interest in the collateral to the secured party. Unless a court orders otherwise, the unsecured creditor can require the secured party to sell the collateral in order to determine whether or not the value exceeds the debt secured.

The long-term effects of the new legislation are yet to be assessed in Canada. However, it is safe to predict that particular types of unsecured creditors will seek legislative intervention designed to tip the balance somewhat more in their favour. There is sufficient precedent in Canada for such legislation.

The structural changes brought about by personal property security legislation have important consequences for debtors as well. The ease with which a secured creditor is able to take and perfect a security interest in a wide range of a debtor’s property can be expected to be an invitation to creditors to demand as much security as their bargaining position will allow. In extreme situations, the debtor may find himself very much under the control of the creditor from whom he obtained secured financing. The danger of this happening was recognized by the drafters of Article 9 of the Uniform Commercial Code and the Canadian Personal Property Security Acts and measures designed to provide some protection for debtors are contained in both Canadian and U.S. legislation. The special priorities given to subsequent purchase-money credit grantors and to purchasers of chattel paper facilitate the acquisition of additional credit by a debtor even though he has encumbered all his present and after-acquired property under a prior security agreement. Otherwise, however, a debtor who has granted an all-encompassing security interest may well find himself in the position of having little opportunity to obtain further secured or unsecured credit. Here again, at least in the Canadian context, the result is not a

52 See Sask. Act supra footnote 1, s. 31 (2).
54 See Saskatchewan Act, supra footnote 1, s. 61. Under Saskatchewan law, a judgment creditor can acquire the requisite interest by issuing a writ of execution and delivering it to a sheriff. See Executions Act R.S.S. 1978, c. E-12, s. 2.2.
56 See supra footnote 46.
57 See e.g., Sask. Act supra footnote 1, ss. 31 (5), 34; U.C.C. 9-38, 9-312 (3), (4).
prouct of a conscious policy choice to give to secured creditors a stronger position than they occupied under prior law. It is simply a by-product of the modernization and simplification of the system and the elimination of the practical difficulties in taking and perfecting security interests encountered under prior law.

2. Common Structural Features of Modern Canadian Personal Property Security Registries

Although the four modern personal property security registries presently in existence in Canadian jurisdictions differ one from the other in many respects, they have many features which are common to all of them. All registries provide for registration at a central location in the jurisdiction. County or regional registration which was a feature of the old systems in two of the four jurisdictions have become largely obsolete as a result of changes in consumer and business financing patterns which have occurred since registries were initially established in Canada. In any event, centralized registration is an important aspect of a computerized registry.

All four registries employ notice registration instead of document registration. Under the former systems, the registering party was required to submit to the registrar the original security agreement or a true copy of it. Registration under the modern personal property registries involves providing to the registrar a financing statement containing the requisite information. The form of financing statement is prescribed by regulations.

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59 Man. Reg. supra, footnote 58, s. 24; Sask. Act, sec. 44; Rev. Reg. of Sask., supra footnote 1, s. 43 (2); The Ontario Act, supra footnote 5, s. 46, provides for registration of financing statements at designated branch offices. However, actual registration occurs in one central registry. Searches can be made through a branch office, but this simply involves a telephone call to the central office. Under the Saskatchewan Act, this type of search may be made through any court house in the province.

60 Saskatchewan and Yukon had central registries to enactment of Personal Property Security Acts.

61 Sec. e.g., The Conditional Sales Act, R.S.S. 1978, c. C-25 s. 5 (2); The Bills of Sale Act R.S.S. 1978, c. B-1, s. 6 (1).

62 The Man. Act, supra footnote 5, s. 47 requires that a copy of the trust deed, bond, debentures or debenture stock containing a security interest in the form of a corporate security be tendered with the financing statement. This provision displays an uneasiness with the notice registration system in situations where large amounts are involved in corporate financing arrangements. No similar provision is found in the other Acts.

63 Sec. e.g., Sask. Act, s. 78 (g) and Rev. Reg. of Sask, passim, supra footnote 1. Act supra footnote 1, s. 53; Yukon Act supra footnote 5, s. 53 (1).
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and is supplied by the registrars. All four registries are designed so that information retained for public inspection is stored on computer tape.

One of the major complaints frequently directed at legislation requiring the registration of personal property security interests is that public registries often create a false sense of security for those who rely on them. Unless there is some guarantee that the information available in a registry is accurate, the registry must be treated as just one of several sources of information for a person who is attempting to assess the degree of risk that other interests in the debtor's property will have priority. The force of this complaint has been significantly reduced in all four jurisdictions through the introduction of statutory indemnification for persons who have suffered damage as a result of an error or omission in the operation of a registry. Of course, the legislation does not guarantee the accuracy of the information stored in a registry since registry officials have no way of determining whether or not the information recorded on financing statements is correct. However, a person who obtains information from any one of the registries need not be concerned that an error has been made by registry officials in the recording or reporting of the information being sought. This statement must be qualified. All four Personal Property Security Acts place limits on the amount of compensation which is recoverable by such a person. When very large amounts of money are involved, the information contained in a registry must be verified by further inquiry.

III. Basic Features of the Saskatchewan Personal Property Registry

In the following paragraphs, the author describes the Saskatchewan Personal Property Registry, the computerized registry system adopted when the Saskatchewan Personal Property Security Act was enacted. This was not the first computerized system for personal property security interests employed in Canada, however, it is the most recent and, therefore, the one most highly developed. There is good reason to conclude that the basic design of the programme used in this system will be adopted for use in registries of several other Canadian jurisdictions including some which must contend with a much higher volume of registrations than presently handled by the Saskatchewan registry.

64 Ont. Act supra footnote 5, s. 45; Manitoba Act supra footnote 5, s. 45; Sask.
65 See, e.g. Rev. Reg. of Sask. supra footnote 1, s. 48 — a single claim to a maximum of 400,000. The Ont. Act provides no limit, but a claimant can recover only an amount up to or equivalent to the value of the assurance fund. See Ont. Act supra footnote 5, s. 45 (3).
66 Rev. Reg. of Sask. supra footnote 1. The Registry has issued a Registration Guide and an Enquiry Guide which elucidate the operation of the system.
67 See supra footnote 1.
68 Computerized registries are used in connection with the Ontario Personal Property Security Act supra footnote 5, the Manitoba Personal Property Security Act supra footnote 5, the Yukon Act, supra footnote 5.
69 The population of the province of Saskatchewan is approximately one million people. Because economic activity is centered around large scale, highly mechanized
Superficially, the registration requirements of the Saskatchewan Personal Property Security Act look very much like those contained in Article 9 of the American Uniform Commercial Code. However, the Saskatchewan Registry has a number of features which are found only in Canadian personal property security legislation; it also has features which are unique. All registrations are effected by the tender of a financing statement to the Registrar. A financing statement must contain *inter alia* the name and address of the secured party, the name and address of the debtor and a description of the collateral. When the collateral is consumer goods or equipment and is a motor vehicle, mobile home or trailer the financing statement must contain the serial numbers of the collateral. When it is an airplane, the Federal Ministry of Transport registration number is required. In all other cases, the collateral must be described by "type or kind"; in other words, by a general description only. The logic of U.C.C. Article 9-306(3) (a) has been taken one step further in the Saskatchewan Act. Proceeds must be described in the same manner as primary collateral unless the proceeds are in the form of cash or of the same type or kind as the original collateral.

The Saskatchewan Act permits a person to register a financing statement at any time, even before a security agreement has been executed by the debtor. Indeed, since a debtor need not sign a financing statement, one can be registered without the consent of the person named as debtor in the document. Special protective measures are built into the Saskatchewan Act to prevent abuse of this flexibility. A person named in a financing statement as a debtor has the power to obtain discharge of a registration against his name and property if the registration does not represent an extant security interest. This is accomplished by exercising a statutory right to require the registrar to serve a notice of lapse on the person named as secured party in the registration. If such person does not provide the Registrar within 40 days a court order maintaining the registration, it will be discharged by the Registrar.

An important feature of the Saskatchewan registry facilitated by the agricultural and mining operations, secured financing is very important to the economic development of the province. For the fiscal year April 1, 1981 to March 31, 1982, the Saskatchewan Personal Property Registry processed 280,059 registrations, an increase of approximately 21% from the preceding year.

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70 See *supra* footnote 1, ss. 41-54, 73.
71 See U.C.C. Article 9, Part 4.
72 See *Sask. Act* s. 44 and Rev. Reg. of *Sask. supra* footnote 1, s. 5.
73 Rev. Reg. of *Sask. supra* footnote 1, s. 5 (10) (i) (i).
74 *Ibid.*, s. 5 (1) (j) .
75 *Sask Oct supra* footnote 1, ss. 2 (cc), 28 (2) .
76 *Ibid.*, s. 44 (2) .
77 *Ibid.*, s. 50. This feature of the *Sask. Act* is very useful as well where a debtor has fully performed his obligations under a security agreement, but the secured party has neglected to discharge the registration.
use of computer technology, is the virtual elimination of the need to renew a registration. When registering a financing statement, the secured party may choose the number of years he wishes the registration to be in effect. He may choose any period between one and twenty-five years, or, alternatively, infinity. 74 His registration will automatically lapse only at the end of the period chosen and not at the end of a period fixed by statute as is the case under all other systems in Canada. Renewal of registration is necessary only when the initial period chosen by the secured party has been inadequate. The ability of the person named in the financing statement to terminate the registration as described above provides a safeguard against an over-cautious secured party who selects a period of registration which extends well beyond completion of performance under the security agreement to which it related.

The extensive capacity of a computerized registry system has been exploited in Saskatchewan in another way. The system is used as a registry for other types of interests which are legally required to be registered and which are of concern to a financer or a buyer. Writs of Execution, which under Saskatchewan law have priority over subsequently registered security interest in the judgment debtor's property, 75 garage keeper's liens 76 and the interests of buyers who have left goods in the possession of their sellers 77 are all registered in the registry. In addition, true leases of goods for a term of more than one year and true consignments, both of which are deemed security agreements under the Saskatchewan Personal Property Security Act, 78 are registered in the system. A single search of the registry will reveal all of these interests.

A party seeking to register a security interest in the Saskatchewan registry tenders a completed financing statement to the Registrar by personal delivery or by mail. Upon receipt, and after preliminary screening for errors, the document is dated and time-stamped and given a registration number. Although it is not yet entered into the registry, it is deemed in law to be registered. 79 The problem associated with this method of proceeding is obvious. It may take as long as forty eight hours to have the information contained on the financing statement, checked, coded, key edited, corrected when necessary and entered into the data storage so that

74 Ss. 48 (2) and Rev. Reg. of Sask. supra footnote 1, s. 5 (10) (b).
79 Ibid., ss. 44 (1).
it is searchable. This period could be made much longer by abnormally high volumes, labour disputes, interruptions in electrical services or by a failure of computer machinery. During this time, a search of the registry does not reveal interests which, however, are deemed to be registered. A secured party who wants to be guaranteed a first priority based on time of registration, must delay the release of money or the grant of credit to a debtor until he can obtain a search result showing that his registration has the priority status he expected it to have. A buyer of the debtor’s property must delay the transfer of his consideration until he can obtain a search result indicating that no interest was registered prior to the time that title to the property was transferred to him. In each case, the consummation of the transaction will be necessarily delayed. A creditor extending unsecured credit, unlike a secured creditor or buyer, cannot protect himself. It is impossible for him to separate acquisition of a priority status from the giving of value to the debtor since his status is acquired only through judgment enforcement measure taken after his debtor’s defaults. While unsecured creditors do not grant credit with the hopes of having specific assets of a debtor available as a source of repayment, in some cases at least, they use information available from registries when making an assessment as to the credit worthiness of a potential customers.

The difficulties for searching parties resulting from deemed registration of interests can be eliminated by adopting the policy that an interest is not legally registered until it is searchable. A potential buyer who wants to avoid subordination to persons with interests which have priority would be spared the problem of delay in being able to deal with a potential seller if de facto and de jure registration were the same. He would be able to make his decision whether or not to proceed with the proposed transaction on the basis of information disclosed in a search result obtained from the registry. He need not speculate as to what other interests might be deemed registered but not disclosed. He still must accept the risk that an interest may be registered between the date of his search and the date of his search and the date title is transferred to him. However, this is likely to be a much more manageable risk than that of subordination to a registered, but undisclosed prior interest. Clearly, an unsecured creditor is in a much better position under this approach. When he advances credit he will have available accurate information as to the extent of the debtor’s liability to secured creditors.

It should matter little, however, to a credit grantor who is investigating the risks of extending secured credit to a debtor which approach is adopted.

84 Delays also occur in manual systems, although these can be minimized through an informal practice under which a person searching the registry is allowed to examine financing statements which are registered but not yet indexed. This practice, however, is only possible where registration is effected at a local registry office which has a small daily volume of registrations. It would be impossible in the context of a centralized registry which must process a large volume of registrations.
Even if all registered interests are disclosed in a current search result, he is no further ahead. In order to ensure that he has the priority status which he expects to have, he must first register his financing statement and make a search before releasing loan money or otherwise granting credit to the debtor. If he does not do so, he runs the risk that a financing statement representing some other interest was tendered for registration just prior to the tender of his financing statement but after he obtained his search result. Unless he can be assured that his financing statement will be registered as soon as it is tendered and that there are no other financing statements in the hands of the Registrar that will be registered before his, he must incur the delay involved in satisfying himself by a registry search that his interest has the desired priority registration.

On the surface, it would seem peculiar that a registry employs a rule that registration of an interest can occur before the fact of registration is discoverable by a person who carried out a search of the registry. The advantage to buyers and unsecured creditors which the other approach permits would appear to make it much preferable. What on first impression appears to be an irrational choice on the part of the designers of the Saskatchewan registry, appears to be less so when the peculiarities of a computerized registry are taken into consideration. It is common knowledge that input, storage and retrieval of information using computers demands a high degree of accuracy. There is little room for error. Accordingly, it is very important that routines be employed which reduce as much as possible the effect of human error in the key editing of information taken from financing statements. The equipment currently available does not permit automatic transfer of this information from a financing statement to a computer tape. A registry employee must read it and reproduce it on a keyboard; and errors in transposition are inevitable. Consequently computer programmes are included in the Saskatchewan system which are designed to identify errors. One of these programmes operates while the information is being fed into the date storage. If an error is found, the information is processed no further, and until the error has been corrected, the information will not be revealed in a search.

If legal registration and searchability were coincidental, an interest may lose its priority merely because of an error on the part of a registry employee, or because the internal procedures of the registry cannot guarantee that all financing statements will be processed in the exact sequence that they are tendered for registration. However, if the priority of an interest is not dependent upon the order in which information is put into the data storage, the holder of an interest need not be concerned about losing an established priority position when a corrective step in the registration process occurs.

A search result issued by the Saskatchewan Registrar has printed on it a "currency date". The person requesting the search must appreciate that the state of affairs as disclosed on the search result is complete up to that date only. Other registrations may appear which have been entered.
after the indicated currency date. However, the disclosed order of priorities insofar as it involves registration after the date is not reliable because an interest which has a higher priority status may not yet be entered due to an error which caused it to fail on the system. This interest will be disclosed only when the currency date is advanced.

The internal error identifications procedures noted above are not the only measures taken to enhance accuracy of the information stored in the registry. Each time an entry is made in data storage, the computer automatically prints out a verification statement containing the information entered. This statement is mailed to the person who tendered the financing statement containing the information. This person is thereby given the opportunity to compare the information entered with the information he wanted to have entered. This procedure allows him to identify and correct not only errors made somewhere in the registry system, but also errors made by him or his employees in preparing the financing statement. This feature is very important to large business organizations which are unable to ensure that employees who prepare financing statements are sufficiently careful and knowledgeable as to the requirements of the registry system to avoid errors. Errors identified through use of a verification statement can be corrected either by tendering a financing change statement containing the corrections, or by returning to the Registrar a copy of the verification statement on which the changes are noted.

Attached to each verification statement is a form of discharge for use when the registered interest is to be discharged. The form contains the information necessary to effect a discharge of registration. The registering party who chooses to use the discharge form is saved the clerical costs of preparing a financing change statement which otherwise would be required to discharge his registration.

Although the Saskatchewan Personal Property Registry regulations require that a discharge statement contain the "authorized signature of the secured party", there is no way to guarantee that a signature appearing on a statement is that of the registering party or that the discharge has been authorized by him. Accordingly, it is not possible to ensure that a registration will not be fraudulently discharged by someone else, such as a debtor, or inadvertently discharged by the registering party or one of his employees. Once a properly completed discharge financing change statement or discharge statement is received by the Registrar, it is processed and the registration to which it refers is removed from data storage and

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85 Rev. Reg. of Sask. supra footnote 1, s. 27 (1) (b).
86 Ibid., s. 27 (1) (b).
87 Rev. Reg. of Sask. supra footnote 1, ss. 30-34. A discharge form is simply a second copy of the verification statement which has printed on it the pertinent information relating to the secured party's registration.
88 Ibid., ss. 10 (g), 34 (b).
is legally discharged. However, in order to provide a measure of protection against fraudulent or inadvertent discharges, a discharge verification statement is automatically printed by the computer and one copy is sent to the secured party whose name appears on the financing statement used to effect the registration and another to the person registering the discharge. As a result, the secured party is informed of any fraudulent or inadvertent discharge and is given the opportunity to re-register his interest.

This fail-safe procedure has major priority implications, however. The original registration has been legally discharged and it is important to know whether or not re-registration establishes the status quo ante. The Saskatchewan Personal Property Security Act answers this question by providing that when a secured party re-registers his security interest within thirty days after the discharge, the priority status of his security interest is not affected as it relates to competing interests in the collateral which arose prior to the discharge, except insofar as subsequent advances are made or contracted for following the discharge and prior to re-registration. Accordingly, the re-registration re-establishes the pre-discharge priority status of the interest only with respect to prior security interests securing advances made before the discharge. In some situations, the secured party whose interest is discharged may not be able to recover totally his pre-discharge priority status.

IV. Collateral Serial Number Registration

The Saskatchewan Personal Property Registry is designed to permit computer-assisted searches using the debtor’s name as the search criterion in all cases, and the serial number of specified types of collateral as an alternative criterion in some cases. Serial number searching capacity is

89 Sask. Act supra footnote 1, s. 48 (3).
90 Rev. Reg. of Sask supra footnote 1, s. 31 (2).
92 It remains an open question as to whether or not the lapse has the effect of giving priority to the holder of a registered writ of execution. See supra footnote 79.
93 Rev. Reg. of Sask. supra footnote 1, ss. 5, 35.
94 Ibid.
considered to be very important as a measure to overcome a major deficiency in any registry system based on debtor name registration only. This deficiency becomes apparent in the context of a situation in which the person searching the registry cannot be assured that some one other than the person whose name he has used as the search criterion has dealt with the collateral in such a way as to bring into being an interest which would have priority over any interest acquired by the searching party. For example, if A takes a security interest in property owned by B and perfects his interests by registration using B's name as the registration criterion, and B then proposes to sell the property to C, C will be able to discover the existence of A's interest through a registry search using B's name. However, if B sells the property to C, who then offers it for sale to D, the registration of A's interest will not be disclosed to D when he obtains a search result from the registry using C's name as the search criterion. The reason for this is that the only search criterion D has available (assuming that he is unaware of the fact that C bought the property from B) is C's name. The result is that A has a registered security interest in the property which will not be disclosed on a search by D.

There are no simple solutions to this problem. Given the supreme importance Canadian law places on property interests, it would be unacceptable to adopt a general rule that A's interest is subordinate to that of D merely because D acquired the property in good faith, for value and without actual notice of A's interest. On the other hand, if A prevails, the efficacy of the registry system can be called into question on the grounds that in this context it does not fulfill its goal which is to provide public access to information concerning security interests in property held by persons not in possession of the property.

The Saskatchewan Personal Property Security Act adopts measures to reduce the magnitude of the problem. One measure is to provide that where small value consumer goods are involved, a good faith buyer is protected. However, the protection is narrow and of no general commercial significance. The requirement that a person claiming a registrable interest must include in his financing statement the serial number of the collateral is by far the most effective measure. If D can use the serial number of the property as a search criterion, he will be able to discover the existence of A's interest, and the fact that there has been one or more intermediate owners of the property prior to its acquisition by C is of no significance.

Unfortunately, while serial number registration provides a solution to the problem noted above, this solution cannot be universally applied because not all types of goods have serial numbers; and, of those that do, only a

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85 No Canadian jurisdiction has adopted certificate of title legislation like that found in most American states.
87 Sask. Act, supra footnote 1, ss. 30 (2) - (3).
few have reliable ones. Manufacturers of many types of goods do not use a consistent, accurate approach when selecting and affixing serial numbers to their goods. There is no assurance that two or more items will not have the same serial number. As a result, the Saskatchewan Personal Property Registry requires serial number registration only when the collateral identified in a financing statement is a motor vehicle, a mobile home, a trailer or an airplane. Further, since flexibility is considered more important than buyer protection when collateral is inventory, serial number registration is required only when the collateral is consumer goods or equipment in the hands of the debtor.

V. Computer Registration And Searches Under The Saskatchewan Personal Property Registry

1. Detailed Accuracy in Registration and Search Criteria

The case reports for North American jurisdictions which have public registry systems for security interests are replete with judicial decisions dealing with the issue as to whether or not the requirements of the systems have been met by registering parties. The enactment of modern personal property security legislation such as Article 9 of the American Uniform Commercial Code has done little to diminish the volume of litigation surrounding this issue. There can be no doubt that the use of computers for storage and retrieval of information has permitted administrative efficiencies and cost savings otherwise not possible in the context of manual personal property registry systems. However, the final assessment of the wisdom of using computer technology in public registries cannot be made

98 See Rev. Reg. of Sask supra footnote 1, ss. 2(3), 5(i). In the case of an airplane, the Federal Department of Transport registration marks must be registered in place of a serial number.

99 There is no general agreement among Canadian jurisdictions as to when serial number registration should be required. In Ontario, the serial numbers of consumer goods which are motor vehicles must be recorded on a financing statement. See Ontario Reg. supra footnote 58, s. 3(2) (a). In Manitoba, Saskatchewan and Yukon, the serial number of consumer goods and equipment which are motor vehicles, mobile homes, trailers or airplanes, must be recorded on a financing statement. See Man. Reg. supra footnote 58, s. 5(4); Sask. Reg. supra footnote 98; Yukon Reg. supra footnote 58, s. 5, 35. The Model Uniform Personal Property Security Act, s. 28(2) adopts a via media on the question as to whether or not serial numbers for motor vehicle equipment collateral must be registered. See, CUMING, "Second Generation Personal Property Security Legislation in Canada" supra footnote 1, at pp. 27-28.

100 For an exhaustive examination of the current law in the United States dealing with non-compliance, see MCDONNELL, "A Reevaluation of Public Notice Under Article 9 of the Uniform Commercial Code", COOGAN, HOGAN and VAGTS, Benders Uniform Commercial Code Service, Secured Transactions, Vol. 1A, Chapter 6C.
without determining the effect that the technology has on the problem of non-compliance with detailed registry requirements.

The most frequently encountered type of non-compliance is failure on the part of the registering party to properly record on his financing statement the correct name of the debtor or the correct serial number of collateral which must be registered by serial number. Other types of errors, such as misdescription of the collateral or error in recording the secured party's name and addresses may result in attack on the validity of the registration. However, since collateral description, other than by serial number, and the secured party's name and address are not registration-search criteria, errors with respect to them can be treated with somewhat more flexibility. However, errors in recording of registration-search criteria cannot be readily overlooked because they are the key to the proper operation of a registry system.

Anyone familiar with the operation of computers will know that unless a programme is specially designed to provide flexibility, the search criterion used by a person seeking information from data storage must correspond exactly to the criterion to which the computer is programmed to respond. If a registering party records an incorrect name for the debtor on his financing statement, his interest will not be disclosed to a searching party who uses the debtor's correct name in his search request. By the same token, the use of an incorrect name by the searching party will not disclose the existence of an interest registered on the basis of the debtor's correct name.

2. Individual, Non-business Debtor Registrations and Searches

The regulations of the Saskatchewan Personal Property Registry require that in order to register a financing statement, inter alia, the surname followed by the first given name and middle name or initials of a non-business debtor must be recorded in the designate area on the financing statement. This information provides the registration criterion for stage of the rest of the pertinent information on the financing statement and the searching criterion for retrieval of that information. If the collateral is of a kind that must be described by serial number, the serial number recorded on the financing statement provides an alternative registration and search criterion.

When a searching party requests a search giving an individual, non-business debtor name (e.g. DONALD A. SMITH) as the search criterion, the search result issued by the Registrar will give as exact matches not only all registrations identical to the search criterion but as well all registrations using the specified surname (SMITH) as the individual debtor name along with a first name and any middle name with a first letter identical to that

101 Rev. Reg. of Sask. supra footnote 1, s. 5.
used as the search criterion (Donald Albert Smith, Donald Adam Smith) and registrations with first and last names identical to those of the search criterion without any middle name or initial (Donald Smith). It will not disclose as exact matches registrations involving a first name other than that set out as the search criterion (Donald) or registrations involving an initial or middle name beginning with a letter different from that used as the search criterion (A). However, it will disclose as a similar match registrations based on a surname identical to that used as the search criterion with no second name or initial or with a second name beginning with the same letter as the second name or initial used in the search criterion. (Dan Smith, Donavan Allan Smith, David A. Smith).

The search resulted noted above will not disclose as an exact or similar match any registration involving a reversal of the order of names as set out in the search criterion (Albert D. Smith, Albert Donald Smith). This latter feature of the programme appears on the surface questionable since the reversal of given names occurs very frequently. However, it must be kept in mind that given names and initials of given names are employed as a refining mechanism. The greater the number of variations disclosed as exact matches or as similar matches, the less refined the information disclosed in a search results. The designers of the Saskatchewan programme concluded that disclosure of registrations with all variations of given names in reverse order to that set out in the search criterion would in many cases render the search result useless to a person requesting it.

The programme employed in connection with the Saskatchewan Personal Property Registry goes beyond disclosure of variations of the first name and middle name of initials of the debtor as indicated on the registered financing statement. In order to permit broader searching capacity, the debtor’s name is coded in such a way as to give it features which could be expected to be found in other similar names which have been subjected to the same coding process. For example, if the debtor's surname is Smith, the coding process reduces it to SNAT. However, the surnames Smith, Schmutz, Schmit, Schmitt, Schmuitz, Schmutt, Smyth are coded to SNAT as well with the result that a search using any one of these surnames will reveal the surname Smith along with the other names listed. Similarly a search using Smith as the search criterion will reveal all of the names listed. The underlying objective of the coding system employed is to permit the search of names which have a sound similar to that which is the basis of the registration. The coding system used in the Saskatchewan Personal Property Registry is a modified form of a code system developed by New York State Information and Intelligence System (NYSIIS).

When a search is conducted, the search result discloses all information contained on the searchable fields of all financing statements registered with a debtor’s name (or serial number) which are an exact or similar match as described above to the search criterion used by the searching party. In addition it discloses as similar matches registration selected by the computer
using the applicable code (SNAT) and refined using recorded first names and initials. Any registration with a debtor surname coded as a similar match to the surname used as the search criterion is disclosed if the first letter of the first name and the middle name or initial on the registration and search criteria are identical, or there is no middle initial excluded on a registration. Accordingly, if the search criterion is DONALD A. SMITH, the search result will disclose as similar matches, \textit{inter alia}, DONALD A. SMYTHE, DAVID ALFRED SCHMUTZ and DONAVON SMYTH.

In practice, a person requesting a search under the Saskatchewan Personal Property Registry is given full information on all exact matches and on all similar matches which a registry clerk chooses as being close similar matches. The similar matches given to the searching party may not be all similar matches disclosed by the search. In many cases a long list of similar matches is revealed, but the registry clerk rejects the great bulk of them as being not close similar matches and, therefore, of no interest to the searching party. The obvious problem with having a registry clerk and not the searching party make the selection from the list of similar matches is that the clerk makes a judgement which legally belongs to the searching party. It is relevant to note, however, that the practice of having a registry clerk make the selection of similar matches was instituted on the request of users of the Saskatchewan system.

It will be appreciated that a searching party who is given all the registered details concerning all exact matches and several similar matches may find it difficult to make practical use of the information disclosed in his search result unless he has some method to refine it further. The extent to which he must be concerned about disclosed registrations which do not correspond to the debtor's correct legal name as set out on his search request is discussed in detail later in this paper. It is sufficient to note here that he cannot ignore them. Where he is not certain that the search criterion which he used is the legal name of the debtor, his need for a method to refine the information disclosed to him becomes more acute. Apart from those situations in which he has available an alternative search criterion such as a serial number of the chattels involved in the transaction he has entered into, the only way in which he will be able to further refine the information is through the use of the birth date of the debtor if this information has been disclosed on the search result. However, under the Saskatchewan Personal Property Registry regulations,\textsuperscript{102} the birth date of a debtor may be, but is not required to be recorded on a registered financing statement. Accordingly, it is only fortuitous that this additional information is available to the searching party.

\textsuperscript{102} Ibid., s. 5(1) (d).
3. Serial Number Registration and Searches

It is recognized that recording errors occur very frequently when long series of numbers or numbers and letters are being transcribed. Accordingly, a coding routine is used to reduce the significance of error on the part of a person who has recorded a serial number on a financing statement or a person who has requested a search result. The code involves selection of the last numeric character and the preceding five characters of the serial number. The remainder of the number and all blanks and non-alphanumeric characters are ignored. All retained alphabetic characters are converted to numeric characters which have a similar physical appearance. I and L are changed to 1, Z to 2, S to 5, H and Y to 4, C and G to 6 and B to 8, O and Q to 0 and all remaining alphabetic characters to 0. For example, a serial number 234YN853125L60S becomes 125160 after it is coded.

In order to permit further refinement by the searching party, the regulations require that the financing statement contain the make, or where there is no make, the manufacturer and model of the collateral. In addition the type of collateral must be indicated according to a prescribed code. The registering party is encouraged, but not required to include the model year and a coded collateral colour indicator. Exact matches displayed on the search result will be those which have serial numbers identical to the serial number on the search request. Similar matches will be all registration where the coded serial number is identical to the code for the serial number on the search result.

4. Artificial Body Debtor Registration and Searches

The Saskatchewan Personal Property Registry Regulations require a registering party to identify and enter the appropriate lines of his financing statement the name of an “artificial body” which is a debtor. The Regulations define “artificial body” to include a partnership, a body corporate, an unincorporated association, an organization, a syndicate, a joint venture, a religious organization, an estate of a deceased person, a trade union, and a trust. When the “artificial body” other than a corporation has no registered name, the given name must be included on the financing statement along with the individual name of a representative of the body.

Ibid.
Ibid.
Rev. Reg. of Sask. supra footnote 1. s. 35 (2).
Ibid.
Registered under The Saskatchewan Business Names Registration Act, R.S.S. 1978, c. 13-11.
For example, in the case of a partnership which does not have a registered business name, the partnership name must be recorded along with the name of at least one of the partners. In the case of an unincorporated charitable organization or a trade union, the name of the organization or union is to be recorded along with the name of each person representing the debtor in the transaction giving rise to the registration. The apparent purpose of this requirement is to provide two searching criteria for a searching party and thereby maximize his opportunity to discover the existence of a registration against the artificial body. It is obvious, however, that this feature of the system has only marginal value. A searching party who is unaware of the name of an unincorporated association, and, therefore, who fails to use it as a search criterion or who uses an improper form of the name, will discover a registration against that body only if he is able to discover the names of the persons representing the association in the transaction giving rise to the registration. Similarly, in the case of a partnership, a searching party who does not have the correct name of the partnership, runs the risk of failing to discover a registration against it unless he requests searches using the names of every partner separately.

Where the debtor is not an artificial body, but someone who carries on business under a name or style other than his own name the business name may, but need not be recorded on the financing statement along with the debtor's own name. Here again the second registration search criterion is of only marginal value.

The names of artificial bodies and business names used by individuals must be recorded on a special "business names" line on the financing statement. The reason for this is that names included in this field of the statement are subjected to a coding technique designed specially to accommodate the peculiarities of business names. The purpose of the coding is to reduce as much as possible distinctions between names based on nonessential characters. Under the coding procedure, all non-alphanumeric characters, for example —&, (, )/ and, frequently encountered non-descriptive words, numbers or abbreviations such as Co., Company, Corp., Corporation, Div., Division, Inc., Incorporated, Ltd., Ltee., Limited, 19nn(year), Holdings, Brothers, Canada, Distributors, Manufacturing, etc. are removed. Other words such as East, West, North, South, Cooperative, Coop and city or town names such as Regina, Saskatoon, Prince Albert are abbreviated.

The coding routine accepts a business name with a maximum number of 50 characters and reduces it to 25 characters. The first 12 characters of the reduced name are then passed to the NYSIIS name coding procedure to be coded in the same manner as an individual name. For example, the business naming procedure reduces Smith Builders (Canada) Ltd to SmithBuilder. The first twelve characters of the coded name, in this case the coded name in its entirety, are then subjected to NYSIIS coding.
which produces a coded name with a maximum of nine characters. In this case the coded name is SNATBALD. A search would reveal as exact matches all registration against SMITH BUILDERS (CANADA) LTD. and as similar matches all registrations involving debtor with business names containing the words Smith Builders as the first two words. These would include SMITH BUILDERS OF CANADA, SMITH BUILDERS (REGINA) LTD.; SMITH BUILDERS (1982) INC., SMYTH BUILDERS LTD., SCHMITH BUILDERS CO. and SCHMUTT BUILDERS and MANUFACTURERS LTD. However, a search would not reveal as an exact or similar match, SMITH ENTERPRISES LTD., or SMITH HOLDINGS LTD. The reason for this is that although the business name coding routine removes the words “enterprises” and “holdings”, the NYSIIS code for “SMITH BUILDERS” is SNATBALD and the NYSIIS Code for SMITH HOLDINGS and SMITH ENTERPRISES is SNAT. Similarly, H. B. SMITH BUILDERS LTD. will not be revealed as an exact or similar match because, unlike coding of individual debtors names, coding of business names involves all of the first twelve characters of the name, including initials. The NYSIIS code for “H. B. Smith Builders Ltd.” is HBSNATBAL.

A problem which has recently been encountered in the context of the Saskatchewan registry arises out of the practice of using the French version of a Canadian business name for registration or searching. Approximately, 25% of the Canadian population speaks French. Although a very small portion of this group resides in Saskatchewan, companies incorporated under federal law, Saskatchewan law and the laws of several other jurisdictions, are entitled to set out their names in their articles in an English form, a French form, an English form and a French form or in a combined English and French form. In addition they are entitled to use and be legally designated by any of the forms adopted in their articles. If a secured party registers a financing statement using the English form of a debtor company’s name and the search is carried out using the French form of the name as the search criterion, the registration will not be disclosed. For example, a registration of SMITH AND SONS LIMITED will be coded as SNATSAN. However, a search on the basis of the French version of the company, SMITH ET FILS LTEE would be coded SNATATFAL.

There are no easy solutions to this type of problem. The interim solution adopted by the Saskatchewan Personal Property Registry is to print on every search result based on a business name criterion a warning to searchers that in cases where the corporate name is composed of an English and a French form, the searching party should request searches using the English form of the name, the French form of the name and any possible combined English-French form of the name. If this advice is

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210 In the next revision of the coding programme, the word “builders” is likely to be included in the category of words removed from the code.

followed in every case where it is suspected that there may be a French name or a combined English-French name for the debtor company, a registration containing this form rather that the English form of the company's name will be disclosed.

Another feature of the Saskatchewan Personal Property Registry which may be a source of problems for a searching party is a way in which locality names are coded. The business coding procedure automatically eliminates some words indicating location which are commonly encountered in Saskatchewan and abbreviates others. For example, Smith Sales (Saskatchewan) Ltd. is coded SNAT. The words Sales, Saskatchewan and Ltd. are dropped as are the brackets. A search using Smith Sales would reveal the registration. However, if the corporate debtor's name as indicated on the financing statement is Smith Sales (California) Ltd., a search using Smith Sales would not reveal the registration since the coded version of this search criterion is SNATCALA. California is not a word regularly encountered in corporate names in Saskatchewan.

It is clear that a considerable degree of sophistication as to the coding procedures used by the Saskatchewan Personal Property Registry is required if users of the system are to fully exploit its capacity to provide public information concerning registered interests in cases where the users do not have totally accurate information for use as registration and search criteria. Undoubtedly, frequent users will ultimately acquire this sophistication. It is just as certain that many other users will not.

VI. What is Seriously Misleading in the Context of a Computerized Registry System

1. Statutory Relief from Strict Compliance with Registration Requirements

The foregoing paragraphs contain a description of a personal property registry system designed to take account of human error on the part of system users. Several error identifications measures are applied by registration personnel before the information contained on a financing statement is entered into data storage. After entry, a verification statement is sent to the registering party. Finally, the computer programme provides to a searching party not only all registrations which are exact matches of the search criterion, but as well a list of similar matches from which a registry clerk selects close-similar matches. No doubt, the system can and will be improved over the next few years so as to increase its usefulness to registering and searching parties. As well, it can be expected that frequent users of the system will become much better acquainted with its peculiarities with the result that the incidence of human error in this group of users will decrease. However, it must be accepted that the problem of human error will always be prevalent to a significant degree.
The question as to whether or not an interest is properly registered involves both legal and administrative considerations. The Registrar is given the statutory power to refuse to register a financing statement tendered for registration if in his opinion the document does not comply with the applicable legislation or regulations. However, it does not follow that acceptance and registration of a financing statement by the Registrar ends all inquiry as to the legal efficacy of the registration. For example, a financing statement containing a name of a debtor which is not his legal name will be registered without question unless it is clear on the face of the tendered document that some mechanical error has been made in transcription of the name. However, the mere fact that the interest has been entered into the date storage of the registry does not mean that the interest is legally registered. The proposition in reverse form is equally untenable under the Saskatchewan Personal Property Security Act. It is not correct to conclude that mere non-compliance with the legal requirements as set out in the legislation and regulations will result in a ruling that an interest registered in data storage is not legally registered. Section 66(1) of the Saskatchewan Personal Property Security Act provides that "the validity or effectiveness of a document to which the Act applies is not affected by reason of a defect, irregularity, omission or error therein, or in the execution or registration thereof unless the defect, irregularity, omission or error is seriously misleading. Consequently, the question as to whether or not a particular interest is legally registered as required by the legislation involves a judicial determination as to whether or not the defect, irregularity, omission or error which is the basis of an attack on the validity of the registration has the result of being seriously misleading to searchers.

The test prescribed by section 66(1) of the Saskatchewan Act is very different from that contained in the equivalent Ontario and Manitoba legislation.

112 Saskatchewan Personal Property Security Act supra footnote 1, s. 52(1).
113 Ibid.
114 An identical provision is contained in the Yukon Personal Property Security Ordinance supra footnote 6, s. 66(1) and the Model Uniform Personal Property Security Act, 1982, s. 66(1).
115 The Ontario Personal Property Security Act supra footnote 5, s. 47(5) provides that:
An error of a clerical nature or in an immaterial or non-essential part of a financing statement or other document required or authorized to be registered in the Personal Property Registry that has not mislead does not invalidate the registration or destroy the effect of the registration.

The Manitoba Personal Property Security Act supra footnote 5, s. 47(5) is identical of the Ontario provision with the exception that it appears to state objective test rather than a subjective test of misleading by using the words "does not mislead" in place of "has not mislead" as found in the Ontario Act. In the Manitoba case of Bank of Nova Scotia v. Airline Credit Union Ltd., [1981] 3 W.W.R. 55 (Man. Co. Ct.) the court overlooked the difference in wording between
In the opinion of the author, however, it is fortunate that the Saskatchewan legislature refused to follow the Ontario and Manitoba legislative precedents on this issue, even though it means that the case law involving the interpretation of the Ontario and Manitoba legislation is of little or no assistance to Saskatchewan courts when they are confronted with the interpretation of section 66(1) of the Saskatchewan Act. The test contained in the section is similar to that set out in Article 9-402(8) of the American Uniform Commercial Code. However, it is unlikely that the vast volume of American case law involving the application of this Article will be of much assistance to Saskatchewan courts because section 66(1) of the Saskatchewan Act must be interpreted in the context of the Saskatchewan registration system which is unlike the systems established under the Uniform Commercial Code.

2. Relationship Between Section 66(1) and Mechanics of the Registry

It would be a grave mistake if Saskatchewan courts were to ignore the mechanics of the Saskatchewan Personal Property Registry when applying section 66(1). While the test of the section is objective in that the court before which the issue arises need not have evidence on record to establish that anyone was actually misled by an error on the part of the registering party, the court should not ignore the nature and extent of information concerning the registration which would actually be disclosed to a searching party. The application of an objective test should not involve hypothetical considerations which do not bear a reasonable relationship to what generally happens in actual fact.

The relationship between section 66(1) and the Personal Property Registry can best be analyzed in the context of a scenario. Assume that a secured party, SPI, tendered for registration a financing statement on which the debtor's name is recorded as DONALD A. SMITH. In fact, the debtor's correct name is DONAVON A. SMITH, and this is the name used as the search criterion by another financer, SPII who has been approached the Ontario provision and the Manitoba provision and required actual proof that someone was actually misled.

The difficulties with these tests are obvious. In the first place, an error which will not invalidate a registration must be of a clerical nature or in an immaterial or non-essential part of a financing statement. A non-clerical error in a material or essential part are of the financing statement will render the registration invalid even though it may not be misleading. See Re Robert Sist Dev. Ltd. (1977), 17 O.R. (2d) 305; (H.C.) Re Bellini Manufacturing and Importing Ltd. (1981), 57 CB Rep. (N.S.) 209 (Ont. C.A.). Further, under the Ontario provision, a major clerical error will not invalidate a registration unless some persons has been actually misled. See Re Lawrence (1980), 26 O.R. (2d) 1980 (Ont. H.C.) See generally, ZIEGEL, "Defects in Registration under the Personal Property Security Act — Has the Pendulum Swung Too Far?" (1979-80), 3 C.B.L.J. 106.
by Smith for a secured loan involving the collateral given as security to SPI. None of the internal error identification procedures used by the registry personnel will identify this error. If the error was caused by careless employee of SPI, it should be identified by SPI when he gets a verification statement from the registry shortly after registration of his interest. However, the fact that SPI fails to take advantage of this error identification opportunity offered by the registry cannot be taken into consideration by a court when determining whether or not the error in the name is seriously misleading. The reason for the error has no effect on the nature of the information contained on the search result obtained by SPI and, therefore, is not a factor in the termination as to whether or not the error is seriously misleading.

Although the name registered by SPI and the name used as the search criterion by SPII are not exact matches, the search result obtained by SPII will disclose the registered name as a similar match if the registry clerk has chosen it as a close similar match. Accordingly, SPII will be on notice that there is a registered interest against at least one other debtor with the name Smith. Is he under obligation to note this fact and to contact SPI in order to determine the true identity of SPI's debtor? To put it in the context of s. 66(1) of the Act: does the fact that the name Smith is reported to SPII as a similar match give to SPI's registration the attribute of not being seriously misleading? Unfortunately, the answers to these questions are not as easy to arrive at as they would appear to be on first impression. Further information is necessary before a justifiable conclusion can be reached.

If the search result obtained by SPII contained a small number of similar matches, it would not be unreasonable to expect him to contact each secured party to determine if they are both dealing with the same person. However, if, as is likely to be the case with common names such as Smith, the number of similar matches is large, it would be unreasonable to expect SPII to follow up every Smith registration noted on the search result. Accordingly, SPI's registration error would be seriously misleading unless SPII has some other method of refining the list of names on the search result so as to identify a few which he might reasonably be expected to pursue. Similar matches with first names similar to that of SPII's potential debtor would likely induce suspicion on the part of SPII and should be taken into consideration by a court. If SPI entered on his financing statement the birth date of his debtor, another refining factor is available to SPII. SPII should be expected to know the birth date of his debtor so as to be able to take advantage of the additional information supplied by SPI.

The issue becomes somewhat more complex in a situation where SPII has registered his interest indicating the name Donald A. Smythe as that of his debtor's, but the debtor's legal name is Donald A. Smith and this name is used by SPII as a search criterion. If SPII cannot expect to pursue a long list of Smith registrations, he surely cannot be expected to pursue dis-
closed similar matches which are spelled significantly different from the debtor's legal name. However, if the search result discloses only a very few similar matches with spelling identical to that used by SPI and a few with spelling differences which are the result of commonly-encountered typing or transcription errors, perhaps he can be expected to pursue all disclosed registrations. Further, if SPI has included on his financing statement the birth date of his debtor so that comparisons can be made with the birthdate of SPI's prospective debtor, the spelling error in the last name should be viewed as not seriously misleading. The same conclusion would not as easily be reached if the spelling differences between SPI's prospective debtor's name and the name on SPI's registration are quite large: e.g. Smith and Schmutz.

3. The Effect of Dual Search Criteria

As noted above, a registering party is required to include on his financing statement the serial number of certain types of collateral. There can be little doubt that failure to include a serial number when required to do so would dictate the conclusion that the registration is seriously misleading, and, therefore, legally invalid in cases where the searching party did not have available as a search criterion the name of SPI's debtor. However, if SPI is aware of this name and it has been properly recorded by SPI, or a name very similar is recorded along with the birth date of the debtor, a strong argument can be made that SPI's omission is not seriously misleading within the meaning of section 66(1) of the Act.

The weakness in this argument lies in the fact that the test set out in section 66(1) is objective, and not subjective. In other words, the courts should not focus on the question as to whether or not a particular searching party should have been misled given the particular information he had available to him. The section requires that the courts focus attention on all hypothetical users of the system which would necessarily include searching parties who have available only a serial number of collateral as a search criterion. It is inconceivable that the Saskatchewan legislature would have intended to create a system under which a particular registration is valid with respect to certain searching parties and not others. This conclusion is supported by those provisions of the Act which subordinate and unperfected interest to a bankrupt debtor's trustee. A bankruptcy trustee is never misled.

116 This would be the case in a situation where the person with whom SPI proposes to deal has acquired the collateral from SPI's debtor.
Since serial number registration provides in some situations a second search criterion, the question arises as to whether or not an incorrectly registered debtor name should be treated as seriously misleading if SPI has available the serial number of the collateral as an alternative search criterion which, if used, will disclose SPI's registration. It is suggested in the immediately preceeding paragraph that failure to register a serial number as required by the regulations should invalidate a registration, even though the debtor's name is available as a search criterion. Consistency would dictate the same conclusion in cases where SPI includes on his financing statement a serial number which substantially or perfectly matches that of the collateral but fails to record the debtor's name in such a form as to lead to the conclusion that it is not seriously misleading. In other words, each criterion should be viewed on its own merits and when both are required for registration; failure of one results in an invalid registration. If either criterion is absent or is so erroneous to be substantially misleading the registration should fail. If one criterion or both criteria contain errors which are not seriously misleading, the registration is valid.

There is an important reason for this approach. The Personal Property Registry regulations require registration of serial numbers for specified types of collateral when that in collateral is either consumer goods or equipment in the hands of the debtor. A security interest the same collateral can be validly registered using the debtor's name as the sole registration criterion if the collateral is inventory in the hands of the debtor. SPI will not always be able to determine whether his prospective debtor holds collateral as inventory, consumer goods or equipment. In some situations, there will be little room for doubt. However, in others this will not be the case. For example, if the prospective debtor is a dealer in new or used motor vehicles, any particular vehicle he has may be either inventory, equipment or consumer goods in his hands, depending upon factors which are not likely to be within SPI's knowledge. The prospective debtor may hold the vehicle as inventory, but use it part of the time for his personal use or part of the time as equipment. If SPI assumes that the vehicle is held as inventory, he will also assume that he need not request two searches, one using the debtor's name as the search criterion and a second using the vehicle serial number as the search criterion. He will conclude that a name search is adequate. If SPI has included in his financing statement the correct serial number of the vehicle, but a debtor's name in a form which is so erroneous as to be seriously misleading, SPI's search will not reveal SPI's interest. It may be argued that in such a situation SPI's registration should be held to be invalid; however, it should be held to be valid in a

118 Rev. Reg. of Sask. supra footnote 1, s. 5(1) (i).
119 See Sask. Act, supra footnote 1, ss. 2(b), 2(h), 2(w).
120 It is common practice in Saskatchewan car dealers to use cars held as inventory for personal use.
situation where SPII had some reason to suspect that the collateral may be equipment or consumer goods in the hands of his prospective debtor. In this case, the erroneous name registration, while seriously misleading by itself, is not seriously misleading when coupled with the correct serial number which is available as an alternate and reliable search criterion. But, again, acceptance of this argument would produce a registry system under which a registration would be held valid or invalid depending upon the nature and extent of knowledge which a particular searching party has or ought to have -- one under which a registration would be valid with respect to some searching parties, but invalid with respect to others.

As noted elsewhere in this paper, the Saskatchewan Registry regulations require the inclusion of two separate registration criteria when the debtor is an artificial body other than a corporation. For example, if the debtor is an unregistered partnership, the financing statement must include the name of the partnership and the name of at least one of the partners. Failure to register the name of the partnership in such a form as to be not seriously misleading should result in an invalid registration. The recorded partner’s name should not be treated as a crutch or refining factor since there is no assurance that every searching party will choose as a search criterion the registered partner name. However, failure to register a partner’s name or failure to record it on the financing statement in a form that is not seriously misleading should not invalidate the registration if the partnership name has been recorded on the financing statement in such a way as to be not seriously misleading. In this respect, the registration of dual criteria in the context of artificial body registration is being treated differently from a registration which must include a debtor’s name and serial number of the collateral. This difference in treatment can be justified on the basis that dual criteria registration for certain types of artificial bodies has a very different purpose from that of the requirement of dual criteria registration where specified types of collateral are involved. The reason for requiring serial number registration is to permit searches in cases where the searching party is dealing with someone who is a transferee of the debtor named in the financing statement. The reason for requiring the registration of the name of one of the partners along with the name of an unregistered partnership is to provide all searching parties with two search criteria. The failure to include the name of one of the partners should affect no one if the partnership name is registered in a form which is not seriously misleading. Further, since the name of the partner cannot be treated as a reliable alternate criterion, its omission or a serious deficiency in its registration should not result in it being treated as being misleading such as to invalidate the registration.

121 Rev. Reg. of Sask., supra footnote 1, s. 35 (2).
122 Ibid.
4. Must a Searching Party Go Beyond Similar Matches?

In the foregoing discussion, it has been assumed that the test of section 66(1) of the Act requires the court to focus on similar matches provided to SPII's. It may be argued that the courts should go further and require a searching party to conduct additional searches using names or serial numbers which are not disclosed as similar matches. This may be an important consideration in the context of business name registrations because of the coding procedure applied to this type of registration under the Saskatchewan Personal Property Registry. It was noted above that a search using the business name Smith Sales (Saskatchewan) Ltd. would not reveal as a similar match a business name registered as Smith Sales (California) Ltd. Similarly a search using Smith Builders Ltd. would not reveal H. B. Smith Builders Ltd. If SPII has used the correct legal name as his search criterion and the error has been made by SPI in his registration there remains the question as to whether or not SPII's error is such as to render his registration seriously misleading. The essential question here is whether or not SPII should be expected to go beyond the list of similar matches supplied by the registry. In other words, should the courts accept as seriously misleading any variation on a legal name which does not appear on the search result obtained by SPII? 192 It will be argued that do so would effectively give to computer programmers the power to determine in this context the legal question as to whether or not particular variations on the legal name of a debtor are seriously misleading. It has been suggested by the author elsewhere in this paper that when interpreting section 66(1) of the Act, the courts should take into consideration the way in which the computerized registry system operates. However, this is not equivalent to a suggestion that they surrender their function to the designers of this system.

There is a via media. There can be little doubt that the Saskatchewan Legislature gave to Saskatchewan courts the task of deciding what amounts to a defect, irregularity, omission or error that is of such magnitude as to be seriously misleading. There is no warrant for the conclusion that a court must find a registered name which contains errors such that it will not appear as a similar match on a search result based on the correct legal name of the debtor ipso facto invalid. However, it would be a grave

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192 This issue is complicated by the practice adopted by the Registrar under which a registry clerk selects from the list of similar matches supplied by the computer a small number of close similar matches and provides to the searching party full information on these registrations along with all exact match registrations. SPII could demand and obtain the complete list of similar matches. If he does not do so and the registry clerk fails to include on a search result SPII's registration is not seriously misleading if a reasonable person in SPII's position would have made further inquiries with respect to the registration had he been informed of its existence.
error to ignore the fact that the similar matches set out on a search result in most cases will be followed by searching parties when determining what variations on the legal name of the debtor are likely to have been used by a person claiming a prior registered interest. Accordingly, the courts should start with the presumption that an erroneous debtor name is seriously misleading if not contained on a search result based on the correct legal name for the debtor. The onus would rest on the registering party to establish that, although his registration was not disclosed on such a search result, a reasonable person in the position of the searcher would carry out additional searches variations on the legal name of the debtor which would reveal his registration as an exact match or close similar match.

A factor which should not be ignored is the ability of computer programmers to modify coding procedures so as to increase the likelihood that an erroneously registered name will be revealed on a search result as a similar match. Several changes have been made in the coding procedures used by the Saskatchewan Personal Property Registry since its introduction. No doubt this process of refinement will continue and the number of situations in which the presumption suggested above could be rebutted will be reduced to a very few.

VIII. Some Proposed Rules for Determining What is Seriously Misleading

The approach to the interpretation and application of the "seriously misleading" test of section 66(1) of the Saskatchewan Personal Property Security Act proposed in the preceding paragraphs is summarized in the following proposed rules:

1. It should be assumed that a search has been conducted by a hypothetical searching party using the legal name of the debtor. There should be no requirement that evidence be presented to establish that such a search was actually carried out or that anyone was actually deceived by the defect, irregularity, omission or error (hereinafter referred to as the defective registration) in the registration criterion or criteria.

2. There should be a presumption that a defective registration is seriously misleading if as a result of the registration defect the legal name of the debtor is not disclosed on a printed search result as a similar match.

3. The presumption set out in rule 2 should be rebuttable only by proof to the satisfaction of the court that a hypothetical reasonable person without expert knowledge as to the coding procedures used by the Personal Property Registry who has requested and obtained a search result would request one or more additional searches which would disclose as a close similar match the registration alleged to be seriously misleading.
4. Where the Personal Property Regulations require a registering party to include on his financing statement the name of the debtor and the serial number of the collateral as registration criteria:

(a) failure to include the serial number of the collateral should render the registration invalid notwithstanding that the debtor's name would be disclosed as an exact or similar match on a search result based on the debtor's name as the search criterion;

(b) failure to include the legal name of the debtor or a name for the debtor which would not be seriously misleading as provided in rule 5, should render the registration invalid notwithstanding that the identity of the debtor would be disclosed through use of information on a search result based on the serial number of the collateral as the search criterion.

5. Where a search result discloses as a similar match the registered name of the debtor along with:

(a) a small number of other names, which are so similar to the legal name of the debtor that a reasonable person requesting the search would not inquire further, the registration defect be found to be not seriously misleading:

(b) a large number of other names which are so different from the legal name of the debtor that a reasonable person requesting the search would not inquire further, the registration defect should be found to be seriously misleading.

(c) a large number of other names, the registration defect should be found to be seriously misleading, unless rule 5(d) is applicable;

(d) a large or small number of other names which are close similar matches to the legal name of the debtor, the registration defect should not be found to be seriously misleading if the birth date recorded beside one or more of the names appearing on the search result correspond to the birth date of the debtor.

6. Subject to rule 4, rules 5(a) and 5(b) should apply mutatis mutandis to a defectively registered collateral serial number.

7. Where the Personal Property Regulations require a registering party to include on his financing statement the name of an artificial body as debtor and the name of some other person, failure to include the former should render the registration invalid, but failure to include the latter or to record the latter in such a form as to be not seriously misleading should not by itself invalidate the registration.

8. Rule 5 should apply mutatis mutandis to a defectively registered name of an artificial body and to a defectively registered name of an individual person carrying on business under a name or style other than his own, but in addition the court may take into consideration any supplementary registration criterion contained on the search result that identifies the debtor.
IN SUMMARY

While Canadian law has generally provided for nearly a century a hospitable climate for the development of flexible security devices suited to the needs of both business and consumer financing, the recent enactment of personal property security legislation patterned on Article 9 of the American Uniform Commercial Code and the use of computer technology in registry systems represent major new initiative in the development of this area of the law. In many respects, those initiatives are experimental, undertaken with the realization of a further refinement in the underlying law and in the administration of personal property registries would be necessary. The enhanced facility with which secured creditors can now take and perfect security interests in personal property may have tipped the balance to heavily against debtors and unsecured creditors. Perhaps rectification measures will be required. What is rapidly becoming clear is that the use of computers in the registration of security interests has permitted efficiencies not possible with manual systems, but at the same time has created a number of new problems which have to be resolved. One of the primary sources of these problems is the fact that the efficient use of computer technology demands a level of expertise not generally found among users of registry systems. The challenge which faced the designers of the computerized registries established in Canadian jurisdictions was to develop computer programs which make the benefits of computerized systems available to ordinary users. It is the author's conclusion that the designers of the Saskatchewan Personal Property Registry have made significant progress toward reaching this goal.