

ONCE IS ENOUGH, TWICE IS TOO MUCH: AN ANALYSIS OF THE DUAL SEARCH REQUIREMENT FOR SERIAL NUMBERED GOODS IN CANADIAN PERSONAL PROPERTY SECURITY LEGISLATION

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I. INTRODUCTION

Since the implementation of Personal Property Security Legislation across Canada a focus has been on ensuring national harmonization of these similar yet independent provincial acts. Substantially similar Personal Property Security Acts (PPSAs) have been enacted by all provinces and territories (the CCPPSL Model) with the exception of Ontario.¹ Efforts have been made to bring Ontario's *Personal Property Security Act*² in line with the other Canadian Acts so as to ensure a measure of national uniformity in personal property security law. While harmonization attempts have been largely successful, Ontario has on occasion opted for its own unique approach. One example of this is Ontario's position relating to the effect of seriously misleading errors in the registration of serial numbered

*© Braeden Pivnick, 2016. Special thanks to Professor Bangsund for your insights and assistance in completing this paper.

¹ Ronald CC Cuming, Catherine Walsh & Roderick J Wood, *Personal Property Security Law*, 2nd ed (Toronto: Irwin Law Inc, 2012) at 65 [Cuming, "PPSL"].

² RSO 1990, c P10 [OPPSA].



goods.³

Certain types of collateral must be described by serial number either to ensure a valid registration or to obtain priority against third parties. The Personal Property Registry provides individuals searching this type of collateral with two methods of conducting their search: A search by debtor name and a search by serial number. What is the consequence when the serial number is recorded correctly but there is an error in the registration of the debtor's name? The jurisprudence is divided on this point.

In Ontario, it has been held that a correctly registered serial number creates a valid registration, notwithstanding the existence of an otherwise seriously misleading error in the entry of the debtor's name. In effect, this imposes a dual search requirement on third parties, who must search both by serial number and debtor name in order to rely on the results of their search. This dual search requirement has been rejected by the majority of jurisdictions that enacted the CCPSL Model, which instead provide that a seriously misleading error in the debtor name invalidates the registration.

The following analysis examines the legislative differences and policy considerations influencing these distinct approaches. This paper seeks to demonstrate that the approach endorsed by the majority of Canadian provinces – rejection of the dual search requirement – best comports with the underlying policy considerations that inform the design of personal property security legislation.

³ Cuming, "PPSL", *supra* note 1 at 68.



II. BACKGROUND TO THE PPSA

The PPSA was inspired by Article 9 of the Uniform Commercial Code in the United States of America, and first adopted by Ontario in 1976.⁴ While the idea of national uniform legislation was discussed and model legislation was crafted, it was never implemented.⁵ However, the Western provinces, seeking to ensure uniformity within the region, formed the Personal Property Security Act Committee in 1986.⁶ This committee attracted participants from across Canada and in 1991 was renamed the Canadian Conference on Personal Property Security Law. The goal of this committee was to “encourage and facilitate the harmonization and compatibility of provincial, territorial and federal personal property security law.”⁷ This goal was largely met; by 2001 generally uniform versions of the PPSA had been enacted in all common law provinces and territories except Ontario. While the OPPSA was significantly modified in 1989, harmonization was not a consideration in the revision process and as a consequence variation between the OPPSA and the other Canadian Acts is more substantial.⁸

III. OBJECTIVES OF THE PPSA

The PPSA was created in response to a highly fragmented legal framework that had developed with the evolution of personal property secured financing in Canada.⁹ The PPSA

⁴ *Ibid* at 5.

⁵ See Canadian Bar Association, *Model Uniform Personal Property Security Act 1970*; Uniform Law Conference, *Uniform Personal Property Security Act 1982*.

⁶ Cuming, “PPSL”, *supra* note 1.

⁷ *Ibid*.

⁸ *Ibid* at 65.

⁹ *Ibid* at 5.



was enacted to “modernize, rationalize and consolidate personal property security law.”¹⁰ In his article “PPSL Values”, Professor Bangsund sought to identify the core commercial values underlying personal property security law.¹¹ While he concedes that the PPSA does not optimally embody the PPSL values, he states that “PPSL values informed the initial design and implementation of the PPSA, and they remain crucial in guiding its continuing development.”¹² The non-exhaustive list of PPSL values articulated by Bangsund includes: facility, transparency, flexibility, simplicity, efficiency, predictability, certainty, clarity, equality, balance, comprehensiveness, and coherency.¹³ The judiciary, when interpreting the various personal property security statutes, should aim to produce a system that comports with these values.

IV. THE LEGISLATIVE SCHEMES

The distinct legislative regime and the judicial interpretation of the OPPSA has led to acceptance of the dual search requirement in Ontario, and rejection in most other provinces. Before examining the cases responsible for establishing the different approaches, it is important to understand some relevant differences and features underlying the two regimes.¹⁴

¹⁰ *Ibid.*

¹¹ Clayton Bangsund, “PPSL Values” (2015) 57(2) Can Bus LJ 184 [Bangsund, “PPSL Values”].

¹² *Ibid* at 187.

¹³ *Ibid* at 191-204.

¹⁴ For the purposes of this paper *The Saskatchewan Personal Property Act, 1993*, SS 1993, cP-6.2 [SPPSA], will be used as a proxy for the CCPPSL Model when discussing legislative provisions. Materially similar provisions exist in all PPSA’s endorsing the CCPPSL.



A. SERIAL NUMBERED GOODS

In Ontario, under the OPPSA, serial number registration and searching is available only for motor vehicles and their unique vehicle identification numbers.¹⁵ The CCPSL Model takes a more expansive approach and includes as serial numbered goods other relatively high valued mobile goods commonly disposed of in secondary markets.¹⁶

B. MANDATORY OR OPTIONAL INCLUSION OF SERIAL NUMBERS

In all jurisdictions registration by debtor name is always mandatory regardless of the nature of the good. Where a serial numbered good is a consumer good, description of the collateral by serial number is similarly mandatory for the registration to be effective.¹⁷ Where a serial number good is held as equipment, registration of the serial number is not required to gain perfection and protection against unsecured creditors and the trustee in bankruptcy. However, without registering by serial number, a secured creditor risks subordination to certain third parties. Under the CCPSL Model, failing to register by serial number risks subordination to a buyer or lessee of the collateral¹⁸ as well as to a competing secured creditor whose registration includes the serial number.¹⁹ Under the OPPSA the consequences are less serious, as failure to register equipment by serial number only

¹⁵ While in Ontario the serial numbers are referred to as vehicle identification numbers, or VIN, for the purposes of this paper “serial number” when used in the context of Ontario refers to the VIN.

¹⁶ Cuming, “PPSL”, *supra* note 1 at 351.

¹⁷ *The Personal Property Security Regulations*, RRS c P-6.2 Reg 1, s 15(a); s 3(7) of the Ministers Order for the OPPSA.

¹⁸ SPPSA, *supra* note 14, ss 30(6)-(7).

¹⁹ *Ibid*, s 35(4).



subjects the secured creditor to the risk of being subordinated to a good faith purchaser and not a competing secured party.²⁰

C. SERIOUSLY MISLEADING ERRORS

When registering a security interest, not all errors or omissions in the information provided have the effect of invalidating the registration.²¹ A registration will be ineffective only where the error is found to be seriously misleading.²² Under both the OPPSA and CCPPSL Model the test for determining a seriously misleading error is an objective one. Therefore, in determining whether an error is seriously misleading it is unnecessary to show that anyone was actually misled, or even that a search was conducted.²³ While this is expressly stated in s.43(8) of the SPPSA,²⁴ the OPPSA test requires that a reasonable person be misled by the error before it is deemed seriously misleading.²⁵ While historically there was a significant subjective element that crept into the analysis²⁶ it has been held that s.46(4) of the OPPSA contemplates a fully objective test.²⁷

²⁰ OPPSA, *supra* note 2, s 28(5).

²¹ Cuming, "PPSL", *supra* note 1 at 363.

²² SPPSA, *supra* note 14, s 43(6); OPPSA *supra* note 2, s 46(4).

²³ Cuming, "PPSL", *supra* note 1 at 364.

²⁴ SPPSA, *supra* note 14.

²⁵ OPPSA *supra* note 2, s 46(4).

²⁶ See *Canamsucco Road House Food Co. v LNGAS Ltd.* (1991), 29 ACWS (3d) 560, 2 PPSAC (2d) 203 (Ont Ct Gen Div).

²⁷ See *Re Lambert* (1994), 20 OR (3d) 108 at para 18, 28 CBR (3d) 1 (CA) [*Lambert*].



V. THE CASES

A. THE ONTARIO MODEL

The leading case on this matter is the Ontario Court of Appeal's decision in *Re Lambert*.²⁸ In his decision, Justice Doherty recognized Ontario's dual search requirement.

1. THE FACTS

Mr. Lambert purchased a motor vehicle under a conditional sales contract. General Motors Acceptance Corporation of Canada (GMAC) registered a financing statement covering the vehicle. GMAC identified the vehicle as consumer goods and correctly recorded the vehicle identification number (serial number), but made an error in recording the debtor's name. Subsequently Mr. Lambert made an assignment in bankruptcy. GMAC claimed secured creditor status vis-à-vis the motor vehicle, but after searching the Personal Property Registry using only the name of the debtor, the trustee asserted that GMAC's security interest was not perfected and as such ineffective as against the trustee in bankruptcy.²⁹

2. ANALYSIS

This case turned on whether the curative provision in the OPPSA applied. Subsection 46(4) states:

²⁸ *Ibid.*

²⁹ *Ibid* at paras 2-6.



46(4) A financing statement or financing change statement is not invalidated nor is its effect impaired by reason only of an error or omission therein or in its execution or registration unless a reasonable person is likely to be misled materially by the error or omission.³⁰

Importantly, the error in GMAC's financing statement would not impair the validity of the registration unless it could be shown that a reasonable person would be materially misled by the error.³¹ After confirming that this was indeed an objective test³² Doherty J. turned to the question of whether s. 46(4) applied to preserve GMAC's security interest.

Doherty J. began by asserting that the purpose of s. 46(4) was to preserve the integrity of the registration system.³³ He held that the integrity of the system requires a balancing of the interests of both those who register financing statements and those who search for prior registrations.³⁴ Doherty J. articulated four attributes of a reasonable searcher:

1. He or she is a reasonably prudent prospective purchaser or lender who looks to the registration system of the PPSA to provide notice of any prior registered claims against the property he or she is proposing to buy or take as collateral for a loan.
2. He or she is conversant with the search facilities provided by the registration system and is a reasonably competent user of those facilities.

³⁰ *Supra* note 2.

³¹ Commentators have concluded that the difference in language between "seriously misleading" and "materially misleading" does not result in any substantive differences, see Cuming, "PPSL" *supra* note 1 at 363.

³² *Supra* note 27 at paras 18-31.

³³ *Ibid* at para 32.

³⁴ *Ibid*.



3. Where the property to be bought or taken as collateral is a motor vehicle, the reasonable person will obtain the name and birth date of the seller/borrower as well as the [serial number] of the motor vehicle.
4. Where the property is a motor vehicle, the reasonable person will conduct both a specific debtor name search and a [serial number] search.³⁵

The Court in *Lambert* concluded that given the characteristics Doherty J. prescribed, a reasonable searcher would not be misled by an error in the debtor's name, as they would have also conducted a search by serial number and discovered GMAC's registration. An error in the debtor's name would not invalidate the financing statement as long as the serial number was correctly recorded. GMAC's financing statement was therefore not undermined and its security interest was perfected.³⁶ Doherty J. reasoned that the dual search requirement better preserves the integrity of the registry system, as a secured creditor's interest should not be subordinated to a third party who is not precluded from retrieving the financial statement by making reasonable use of the registry's search capabilities.³⁷

The Court acknowledged that an error in transcribing the debtor's name, where the serial number is not recorded, is fatal to the registration.³⁸ However, the Court adopted the dual search requirement even where the motor vehicle is held as equipment and the secured creditor chooses to register by serial number. This means that a correct serial

³⁵ *Ibid* at para 45.

³⁶ *Ibid* at para 56.

³⁷ *Ibid* at para 55.

³⁸ *Ibid* at para 48.



number would save an error in recording the debtor's name in circumstances where the serial number is not a mandatory component of the registration.

B. THE CCPPSL MODEL

The most prominent case establishing the approach taken by jurisdictions following the CCPPSL Model of the PPSA is the New Brunswick Court of Appeal decision in *GMAC Leaseco Ltd. v. Moncton Motor Home & Sales Inc. (Trustee of)*.³⁹

1. THE FACTS

The debtor, Moncton Motor Home & Trailer Sales Ltd. (Moncton Motor Home), purchased a truck from a dealer who assigned the contract to GMAC. GMAC registered the financing statement and included the debtor name and serial number of the truck, however the debtor's name was registered inaccurately.⁴⁰ Moncton Motor Home made an assignment in bankruptcy and GMAC claimed a security interest in the truck. The trustee in bankruptcy conducted a registry search by debtor name only, which did not reveal GMAC's interest.⁴¹ It was argued by Moncton Motor Home that "a reasonable person would have undertaken an alternative search by serial number and since that search would have revealed the existence of the financing statement, the error in the debtor's name cannot be classified as seriously misleading."⁴²

³⁹ 2003 NBCA 26, 227 DLR (4th) 154 [*Moncton Motor*].

⁴⁰ The truck was classified as equipment in this case and thus registration by serial number was not mandatory.

⁴¹ *Supra* note 39 at paras 6-8.

⁴² *Ibid* at para 2.



2. ANALYSIS

In determining whether a search by both debtor name and serial number was required, the Court began by assessing the relevant curative provisions, ss. 43(7) and (8) in the *New Brunswick Personal Property Security Act*.⁴³ These provisions read as follows:

43(7) The validity of the registration of a financing statement is not affected by any defect, irregularity, omission or error in the financing statement unless the defect, irregularity, omission or error is seriously misleading.

43(8) Subject to subsection (10), a registration is invalid if there is a seriously misleading defect, irregularity, omission or error in

(a) the name of any of the debtors required to be included in the financing statement other than a debtor who does not own or have rights in the collateral, or

(b) the serial number of the collateral if the collateral is consumer goods of a kind that are prescribed as serial numbered goods.⁴⁴

The Court reasoned that the wording of the NBPPSA negates the possibility of there being a dual search requirement. The Court stated “[p]aragraph 43(8)(b) dictates that [where the collateral qualifies as consumer goods, and inclusion of the serial number is mandatory] both the serial number and debtor's name must be accurate...A seriously misleading error in either is fatal to a registration's validity.”⁴⁵ The Court further held “[i]n cases where registration by serial number is optional, that is to say when dealing with inventory or equipment, the validity of the registration is dependent on the accuracy of the debtor's name and not on the serial number that may have been included.”⁴⁶ This conclusion was supported by cases in two other jurisdictions that had dealt with this issue

⁴³ SNB 1993, c P-7.1.

⁴⁴ *Ibid*, ss 43(7)-(8) [emphasis added] [NBPPSA].

⁴⁵ *Supra* note 39 at para 100.

⁴⁶ *Ibid* at para 99.



outside of Ontario.⁴⁷ In the present case, the serial numbered good was held as equipment and the error in the debtor’s name was held to be seriously misleading. GMAC’s security interest was subordinate to the trustee in bankruptcy notwithstanding that the registration by serial number was accurate.

VI. POLICY CONSIDERATIONS AND ISSUES

No equivalent to NBPPSA s. 43(8) exists in the OPPSA. The provision makes clear that a seriously misleading error in any mandatory information will always invalidate a registration.⁴⁸ The differences in statutory language between the OPPSA and the CCPSL Model can explain the distinct approaches adopted in *Lambert* and *Moncton Motor*. However, notwithstanding the legislative disparities, significant criticism has been levied against the *Lambert* decision for adopting the dual search requirement. The following section of this paper addresses these criticisms, and identifies how, from a policy perspective, the CCPSL Model represents the better approach.

A. ISSUES WITH THE DUAL SEARCH REQUIREMENT

The Court in *Lambert* held that the dual search requirement “more effectively preserves the integrity of of the registration system by more fairly balancing the interests of secured creditors and prospective purchasers and lenders.”⁴⁹ On its face, the dual search

⁴⁷ *Ibid* at paras 70-78. See *Kelln (Trustee of) v Strasbourg Credit Union Ltd.*, 89 DLR (4th) 427, [1992] 3 WWR 310 (SKCA) [*Kelln*]; *Case Power & Equipment v. 366551 Alberta Inc. (Receiver of)* (1994), DLR (4th) 637, 157 AR 212 (CA).

⁴⁸ David L Denomme, “Name/Number Tie-Breaker (for Now): *Stevenson v. GMAC Leaseco Ltd.*” (2004) 19 BFLR 295 at 302 [Denomme, “Tie Breaker”].

⁴⁹ *Supra* note 27 at para 55.



requirement accords with personal notions of fairness as well as the underlying PPSL value requiring that the system be balanced. As the Court in *Moncton Motor* acknowledged, “why should a trustee in bankruptcy [who is unable to allege actual prejudice]... be entitled to reap a windfall by pouncing on inadvertent errors that have misled no one?”⁵⁰ This idea is premised on the seeming inequity of punishing an individual who is guilty of simple inadvertence in favour of those who are not, or could not be, misled.⁵¹ This reasoning, however, ignores the objective nature of the test for determining seriously misleading errors. While Doherty J. acknowledged that the test was an objective one, Professor Wood adeptly recognized that “[o]ne cannot, however, escape the lingering suspicion that this concern with improper windfalls by trustees may have spilled over...and thus tipped the balance in favour of registering parties at the expense of searching parties.”⁵² As Professors Cuming, Walsh, and Wood explain, the purpose of the objective test “avoid[s] case-by-case litigation on the question of actual prejudice and promotes the integrity and reliability of the registration system.”⁵³ In this sense, the purpose of the registration system is fairness and predictability; the fairest system is one that is predictable, not preoccupied with *ad hoc* notions of fairness.

The dual search requirement is further criticized on the basis that “serial number searching is intended to be a supplementary mode of searching, not an alternative to

⁵⁰ *Supra* note 39 at para 13. In *Moncton Motor* the error was a simple conflation of the words Motor Home to MotorHome. However, the algorithm which defines the search capabilities of the New Brunswick Personal Property Registry did not provide the registration as either an exact or similar match.

⁵¹ *Ibid* at para 65.

⁵² “Registration Errors Under the OPPSA: Lambert (Re)” (1995) 24 CBLJ 444 at 454 [Wood, “Re Lambert”].

⁵³ Cuming, “PPSL”, *supra* note 1 at 364.



debtor name searching.”⁵⁴ It is essential that third parties can rely entirely on either a debtor-name search or serial number search in order to preserve the integrity of the registry system.⁵⁵ The dual search requirement is inappropriate in a system designed to produce clarity and consistency.⁵⁶

Furthermore, the secured party registering its interest in serial numbered goods is able to avoid these issues by simply being diligent in ensuring the information registered is accurate. As Professor Wood reasons, “an efficient registration rule should place the risk on the party better able to take appropriate measures to avoid the loss.”⁵⁷ A secured creditor is not in a position to complain of the result where it had the opportunity to avoid the problem in the first place. As stated by Chief Justice Bayda in *Kelln (Trustee of) v Strasbourg Credit Union Ltd.*,⁵⁸ “[where] it becomes necessary to choose between the person who is responsible for the omission and a person in the position of a reasonable person... it is the former who should suffer any loss flowing from the omission.”⁵⁹ This excerpt demonstrates that the CCPSL Model is not indifferent to the PPSL value of balance, whereby the legitimate interests of all affected parties are to be given full and fair consideration.⁶⁰ Additionally, ensuring the predictability and certainty of the system requires that secured creditors accurately record reliable information. Denomme states:

⁵⁴ *Ibid* at 368.

⁵⁵ *Ibid*.

⁵⁶ *Ibid* at 5.

⁵⁷ Roderick J Wood, “Registration Requirements and Registration Errors Under the APPSA” (1996) 27 Can Bus LJ 132 at 141.

⁵⁸ *Supra* note 47.

⁵⁹ *Ibid* at para 59.

⁶⁰ Bangsund, “PPSL Values”, *supra* note 11 at 203.



secured parties are expected to comply with the rules to get the effect they want, and searchers are entitled to assume that only those that have complied will get that effect. To let those that have not complied achieve the same effect creates uncertainty, and situations like that need to be minimized if the outcomes are to remain predictable.⁶¹

In short, the approach endorsed in *Lambert*, under the OPPSA, is inconsistent with a key legislative policy objective.

B. ISSUES WITH THE REASONABLE SEARCHER

Criticisms have been levied against the decision in *Lambert*, questioning the validity of the characteristics the Court attributed to the reasonable searcher.⁶²

While Doherty J. recognized that potential creditors may also search the registry to inquire into the creditworthiness of the debtor, he concluded that this was a mere incidental use and not in accordance with the purpose for which the system exists. Notwithstanding the critical function the search feature provides, this notion has generally been accepted by commentators.⁶³ However, Doherty J. failed to recognize that the drafters of the PPSA contemplated a class of unsecured creditors who could reasonably be expected to search the registry to discover the existence of a security interest. Judgment creditors “will actively seek out unencumbered assets belonging to the debtor against which they can enforce their judgments.”⁶⁴ Unlike a buyer or a secured creditor, a judgment creditor likely

⁶¹ Denomme, “Tie Breaker”, *supra* note 48 at 300.

⁶² See Wood, “Re Lambert”, *supra* note 52; David L Denomme, “Search Again? Names, Numbers and Reasonable Persons” (2001) 17 BFLR 1 [Denomme, “Search Again”].

⁶³ See Wood, “Re Lambert”, *ibid* at 451.

⁶⁴ Roderick J Wood, “Registration Errors and Dual Search Criteria: Gold Key Pontiac Buick (1984) Ltd. v. 464750 BC Ltd.” (2001) 35 Can Bus LJ 146 at 152 [Wood, “Gold Key”].



does not know the serial number of collateral until it is seized, and as such, would likely search solely by debtor name.⁶⁵

The assumption that the reasonable searcher would know to conduct both a debtor name and serial number search is also questionable. While sophisticated financial institutions and legal counsel may understand the registry system sufficiently to conduct a dual search, ordinary members of the public may also be responsible for searching the registry. As Professor Wood suggests, “it seems unrealistic to expect [members of the public] to possess a similar level of commercial sophistication.”⁶⁶

Lastly, the assumption that a reasonable searcher will undoubtedly conduct a dual search ignores the fact that there are circumstances in which the person searching the registry would reasonably conduct a search by debtor name only. Even if serial numbers are readily accessible, a serial number search requirement imposes significant cost, time and effort on Personal Property Registry searchers.⁶⁷

Professor Wood recognizes that these criticisms can be overcome by limiting the dual search requirement to those situations in which goods are held as consumer goods. However, not only does this approach lead to further confusion,⁶⁸ nothing in Doherty J.’s decision seems to lend itself to this interpretive approach. Doherty J., relying on the characteristics he attributed to a reasonable searcher, seemed to hold that, where a serial numbered good is held as equipment and the secured creditor chooses to register by serial

⁶⁵ Wood, “Re Lambert”, *supra* note 52 at 452.

⁶⁶ *Ibid.*

⁶⁷ Cuming, “PPSL”, *supra* note 1 at 368; *Ibid* at 453.

⁶⁸ *Ibid.*



number, an error in the debtor's name will not invalidate the registration, so long as the serial number is correctly transcribed.⁶⁹ This presumption is illogical. As Denomme notes, "[i]t must be assumed that the decision to make serial number registration optional in the non-consumer goods context was deliberate."⁷⁰ As discussed above, legislation across all jurisdictions bases the validity of a registration covering inventory or equipment solely on the accuracy of the debtor's name. As the Court stated in *Moncton Motor*, "a third party could never be misled by an erroneous serial number covering equipment or inventory...because a searcher intent on searching by serial number must act on the premise that the registrant may have elected to omit reference to the serial number."⁷¹ Where serial numbered goods are held as equipment, there is no good reason to allow a properly recorded serial number to overcome a seriously misleading error in the debtor's name. The Court in *Moncton Motor* addressed this issue. The reasoning of the Court is well summarized by Denomme as follows:

Robertson J.A. specifically endorses an analytical approach that distinguishes between mandatory and optional information when considering registration errors. In a notice-filing system like the PPSA, it simply makes no sense to have results which either (i) allow seriously misleading errors in mandatory registration fields not to affect the validity of the registration, or (ii) allow errors in optional registration fields to make the registrant worse off than if it had not completed the fields at all.⁷²

⁶⁹ *Lambert*, *supra* note 27 at para 48.

⁷⁰ Denomme, "Search Again", *supra* note 62 at 37.

⁷¹ *Supra* note 39 at para 78.

⁷² Denomme, "Tie Breaker", *supra* note 48 at 304.



The approach followed by Robertson J.A. better comports with the reasons why the drafters of the PPSA distinguished consumer goods from equipment with respect to registration by serial number.

Both the dual search requirement, and the underlying characteristics of a reasonable searcher recognized by the Court in *Lambert*, have attracted significant criticism. The approach endorsed by the CCPSL Model is not only appropriate based on a strict reading of the statute, but it is also better aligned with the underlying policy objectives of the PPSA.

VII. CONCLUSION

Attempts to create uniform national personal property security legislation have been largely successful in Canada. A major impediment to this beneficial movement is the division that exists between the OPPSA and the CCPSL Model.⁷³ Ontario's approval of a dual search requirement for serial numbered goods presents an apt example of this division. The Ontario approach, which recognizes that an otherwise seriously misleading error in the entry of a debtor's name can be saved by a correctly registered serial number, has been rejected by the majority of other jurisdictions. Doherty J.'s decision in *Lambert*, imposing a dual search requirement for serial numbered goods, has met with significant disapproval. The policy considerations underlying the PPSA firmly support a rejection of the dual search requirement. The integrity of the registry system requires that for consumer goods, where registration by serial number is mandatory, third parties should be

⁷³ Wood, "Gold Key", *supra* note 64 at 156.



able to rely on either a serial number *or* debtor name search; an error in either invalidates the registration. Where the serial numbered good is classified as equipment and registration by serial number is optional, validity of the registration (based on search results) is solely dependent on the accuracy of the debtor's name.

One problem with the divisive state of the law is “how easy it is to overlook important differences in statutory language when applying decisions from a jurisdiction that uses the other model.”⁷⁴ This is precisely what occurred in *Gold Key Pontiac Buick (1984) Ltd. v. 464750 B.C. Ltd. (Trustee of)*,⁷⁵ where the British Columbia Court of Appeal adopted the Ontario Court of Appeal's analysis in *Lambert*, notwithstanding the fact that British Columbia's *Personal Property Security Act*⁷⁶ contained express language to the contrary.⁷⁷ While legislative amendments to the OPPSA, aligning the statute with the CCPPSL Model, would help resolve this confusion, such a change seems unlikely. In 1993, the Ontario PPSL Committee recommended the express codification of the dual search requirement,⁷⁸ and in 2016, the Business Law Advisory Council recommended similar amendments be made to the OPPSA.⁷⁹ Codification of the dual search requirement in Ontario would clarify the law, but then there would be two distinct systems operating within Canada. This clarity comes at the expense of national harmony, and given that policy

⁷⁴ *Ibid.*

⁷⁵ 2000 BCCA 435, 189 D.L.R. (4th) 668.

⁷⁶ RSBC 1996, c 359 [BCPPSA].

⁷⁷ Similar to s 43(8) of the NBPPSA, s 43(7) of the BCPPSA expressly rejects the need for a dual search requirement.

⁷⁸ Cuming, “PPSL”, *supra* note 1 at 68 n 321.

⁷⁹ Business Law Advisory Council, *Fall 2016 Report to Minister of Government and Consumer Services* (February 3, 2017), online: <<http://www.ontariocanada.com/registry/view.do?postingId=23184&language=en>>. In November 2017, the OPPSA was amended to codify the dual search requirement, see OPPSA *supra* note 2, ss 46.1-46.2.



considerations firmly support the rejection of the dual search requirement, Ontario legislators should be hesitant to endorse these recommendations.

