

UNIQUELY TREACHEROUS WATERS: MORE ON THE “SELLER IN POSSESSION” STATUTORY REGIMES OF NEW BRUNSWICK, NEWFOUNDLAND & LABRADOR, NOVA SCOTIA AND PRINCE EDWARD ISLAND

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*Aucupia verborum sunt iudice indigna.*¹

I. Introduction

In a trio of recent articles published in the *Saskatchewan Law Review*,² *Dalhousie Law Journal*³ and *Supreme Court Law Review*,⁴ I have criticized numerous aspects of the diverse provincial and territorial statutory regimes that govern “seller in possession” title disputes in common law Canada. In this fourth edition of the pentalogy, the theme continues as I sharpen my critical focus on the quartet of regimes in Atlantic Canada.

A “seller in possession” title dispute occurs when an initial buyer leaves bought goods in the possession of the seller who then transfers them to a subsequent transferee.⁵ Presently, there are four distinct statutory models in force, across common law Canada, that apply to resolve such conflicts.⁶ Except for Manitoba, Ontario and Yukon (the “Model 1” jurisdictions), all provinces and territories have incorporated electronic personal property registry infrastructure into their statutory priority regimes. However, the manner of integration sharply diverges between western and northern jurisdictions on one hand (Alberta, British Columbia, Northwest Territories, Nunavut, Saskatchewan, the “Model 2” jurisdictions), and eastern jurisdictions on the other. Only in New Brunswick, Newfoundland and Labrador, Nova Scotia (the “Model 3”

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¹ Translation: quibbling over words is unworthy of a judge.

² Clayton Bangsund, “ABCD Remoteness Problems: *Nemo Dat* & Its Exceptions Under Subsection 26(1.2) of Saskatchewan’s *The Sale of Goods Act*” (2018) 81:2 *Sask L Rev* 133 [Bangsund, “ABCD Remoteness Problems”].

³ Clayton Bangsund, “A Survey and Critique of the “Seller in Possession” Statutory Regimes of Common Law Canada: An ABC Prequel” (2019) 42:2 *Dal LJ* 243 [Bangsund, “ABC Prequel”].

⁴ Clayton Bangsund, “Eliminating Redundancy in Legislation Governing the Sale of Goods: A Threequel” (2019) 93 *SCLR* (2nd) 367.

⁵ MG Bridge, *Sale of Goods* (Toronto: Butterworths, 1988) at 633.

⁶ See Bangsund, “ABC Prequel”, *supra* note 3.

jurisdictions) and Prince Edward Island (the sole “Model 4” jurisdiction) does the *Personal Property Security Act*⁷ (*PPSA*) potentially apply to resolve the title dispute between the initial buyer and subsequent transferee.

In the Dalhousie Law Journal, I identified problems with statutory Models 3 and 4 that deserve attention from eastern Canadian lawmakers.⁸ In short, by defining a “sale of goods without a change of possession”⁹ as a transaction that creates a deemed security interest under the *PPSA*, legislators in Atlantic Canada have exposed buyers, who postpone possession of bought goods, to intolerable levels of risk of loss to a variety of competitors in an array of arguably unwarranted circumstances. For this reason, I think New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island should uniformize their “seller in possession” statutory regimes with Model 2 provinces and territories. Here, in my penultimate piece on this subject, I briefly highlight two additional technical difficulties with Models 3 and 4 that strengthen the case for statutory and regulatory reform in Atlantic Canada even if my principal advice is rejected. The first problem concerns attachment, the second concerns perfection.

II. Attachment

Creation

To ensure a sound conceptual framework for the governance of security interests, personal property security legislation is replete with technical language and concepts. “Attachment” concerns the *creation* or *establishment* of a security interest in personal property. The term is not statutorily defined but the elements of attachment are clearly laid out in Part II of the *PPSA*. A secured party acquires a non-possessory security interest in goods only when the conditions for attachment have been satisfied, namely: (1) the secured party gives value;¹⁰ (2) the debtor signs a security agreement describing the goods;¹¹ and (3) the debtor has rights, or the power to transfer rights, in the goods.¹² Until these conditions of attachment have been met, the secured party has, at most, an

⁷ *Personal Property Security Act*, SNB 1993, c P-7.1 [NBPPSA]; *Personal Property Security Act*, SNS 1995-96, c 13 [NSPPSA]; *Personal Property Security Act*, SNL 1998, c P-7.1 [NLPPSA]; *Personal Property Security Act*, RSPEI 1988, c P-3.1 [PEIPPSA].

⁸ Bangsund, “ABC Prequel”, *supra* note 3 at 256–259.

⁹ NBPPSA, *supra* note 7, s 1(1); NLPPSA, *supra* note 7, s 2(1)(ll); NSPPSA, *supra* note 7, s 2(1)(an); PEIPPSA, *supra* note 7, s 1(1)(nn).

¹⁰ NBPPSA, *supra* note 7, s 12(1)(a); NLPPSA, *supra* note 7, s 13(1)(a); NSPPSA, *supra* note 7, s 13(1)(a); PEIPPSA, *supra* note 7, s 12(1)(a).

¹¹ NBPPSA, *supra* note 7, ss 10(1)(b), 12(1)(c); NLPPSA, *supra* note 7, ss 11(1)(b), 13(1)(c); NSPPSA, *supra* note 7, ss 11(1)(b), 13(1)(c); PEIPPSA, *supra* note 7, ss 10(1)(b), 12(1)(c).

¹² NBPPSA, *supra* note 7, s 12(1)(b); NLPPSA, *supra* note 7, s 13(1)(b); NSPPSA, *supra* note 7, s 13(1)(b); PEIPPSA, *supra* note 7, s 12(1)(b).

inchoate interest.¹³ Upon satisfaction of the conditions, the secured party acquires a statutory charge that may be asserted against third parties.

Rights or Powers

For many secured transactions involving goods, the third element of attachment—rights, or the power to transfer rights, in the collateral—is easily satisfied. Where, for example, the debtor owns the goods that are subject to the security interest, the secured party encounters no conceptual or practical difficulty attaching its security interest. But this is not so for the deemed security interests.¹⁴ Consider the “lease for a term of more than one year”¹⁵ and the “commercial consignment”,¹⁶ the other two types of deemed security interests involving goods. In respect of these transactions, it is not clear that the putative debtor (the lessee or consignee, as the case may be) has rights in the goods capable of supporting attachment in favour of either the original deemed secured party (the lessor or consignor) or a future true secured party. Indeed, *nemo dat*¹⁷ suggests the very opposite. It is for this reason that the *PPSA* explicitly provides, *ex abundanti cautela*,¹⁸ that a lessee under a lease for a term of more than one year, or a consignee under a commercial consignment, has rights in the goods sufficient to support attachment of a security interest.¹⁹ Subsection 12(3) of the *NBPPSA* (in this article, New Brunswick law will serve as proxy for the law of all Model 3 and 4 provinces) is reproduced below:

For the purposes of paragraph (1)(b) and without limiting other rights, if any, which the debtor has in the goods, a lessee under a lease for a term of more than one year or a consignee under a commercial consignment has rights in the goods when the lessee or consignee obtains possession of them under the lease or consignment.²⁰

¹³ *Royal Bank of Canada v Radius Credit Union Ltd*, 2010 SCC 48 at para 31.

¹⁴ *NBPPSA*, *supra* note 7, s 1(1); *NLPPSA*, *supra* note 7, s 2(1)(pp)(ii); *NSPPSA*, *supra* note 7, s 2(1)(ar)(ii); *PEIPPSA*, *supra* note 7, s 1(1)(rr)(ii).

¹⁵ *NBPPSA*, *supra* note 7, s 1(1); *NLPPSA*, *supra* note 7, s 2(1)(y); *NSPPSA*, *supra* note 7, s 2(1)(y); *PEIPPSA*, *supra* note 7, s 1(1)(y).

¹⁶ *NBPPSA*, *supra* note 7, s 1(1); *NLPPSA*, *supra* note 7, s 2(1)(h); *NSPPSA*, *supra* note 7, s 2(1)(h); *PEIPPSA*, *supra* note 7, s 1(1)(h).

¹⁷ *Nemo dat quod non habet*—translation: no one can give what he does not have.

¹⁸ Translation: out of abundant caution.

¹⁹ See Jacob S Ziegel & Ronald CC Cuming, “The Modernization of Canadian Personal Property Security Law” (1981) 31:3 UTLJ 249 at 262; RCC Cuming, “True Leases and Security Leases Under Canadian Personal Property Security Acts” (1983) 7:3 Can Bus LJ 251 at 259. One peer reviewer disagrees with this interpretation of the provision’s purpose and effect, suggesting instead that it is solely focused on clarifying the time at which a lessee or consignee acquires rights or powers sufficient to support attachment. On one hand, this narrow interpretation is appealing because it furnishes a plausible explanation as to why the other deemed security interests are not referenced in the provision. On the other hand, it is plainly inconsistent with the stated intentions of the chief architects of Canadian personal property security legislation.

²⁰ *NBPPSA*, *supra* note 7, s 12(3); *NLPPSA*, *supra* note 7, s 13(3); *NSPPSA*, *supra* note 7, s 13(3); *PEIPPSA*, *supra* note 7, s 12(3).

Argument from Silence

It is peculiar that there is no express reference to a “sale of goods without a change of possession” in the above provision in light of such transaction’s characterization as a deemed *PPSA* security interest. Does a seller under a sale of goods without a change of possession have rights in the goods, or the power to transfer rights, sufficient to support attachment of a security interest? Recall that the seller no longer owns the goods, instead occupying the role of bailee in possession of the buyer’s property. Accordingly, there is foundation for the view that the absence of express statutory language deeming a seller in possession to have rights or powers sufficient to support attachment, coupled with the presence of such language respecting the other deemed security interests involving goods, implies that a seller in possession lacks these rights or powers: *argumentum ex silentio*.²¹

Reduction to the Absurd

Then again, to adopt the above interpretation would defeat the purpose of including a “sale of goods without a change of possession” within the scope of the *PPSA*. Indeed, the more sensible interpretation is that a seller under a sale of goods without a change of possession, as bailee in possession, does have rights or powers sufficient to support attachment of a security interest.²² Supporting this purposive interpretation is the operative language “and without limiting other rights, if any, which the debtor has in the goods”. To interpret the *PPSA* otherwise would be to render unattachable any security interest given by the seller in possession: *reductio ad absurdum*.²³

Out of Abundant Caution

The absence of express statutory language reinforcing a seller in possession’s ability to confer a valid security interest, in this *sui generis*²⁴ context, appears to be a legislative oversight. It can be remedied with the addition of appropriate language to the existing statutory provision. Specifically, subsection 12(3) of the *NBPPSA* should be amended as follows:

For the purposes of paragraph (1)(b) and without limiting other rights, if any, which the debtor has in the goods, a lessee under a lease for a term of more than one year, ~~or~~ a consignee under a commercial consignment, or a

²¹ Translation: argument from silence.

²² See Ronald CC Cuming, Catherine Walsh & Roderick J Wood, *Personal Property Security Law*, 2nd ed (Toronto: Irwin Law, 2012) at 258.

²³ Translation: reduction to the absurd.

²⁴ Translation: of its own kind or class; unique or peculiar.

seller under a sale of goods without a change of possession, has rights in the goods when the lessee, ~~or~~ consignee or seller obtains or retains, as the case may be, possession of them under the lease, ~~or~~ consignment or sale.²⁵ (additional language underlined, deleted language struck out)

To date, this anomaly has not caused any interpretive difficulties for courts. However, it is a point worth clarifying for the legislative record in case the issue does arise in the future. For those Atlantic provinces whose legislators consider implementing the reforms detailed in the *Report to the Canadian Conference on Personal Property Security Law on Proposals for Changes to the Personal Property Security Acts*,²⁶ this additional housekeeping item is also worthy of consideration, again, as a second-best alternative to my principal recommendation.

III. Perfection

Status

“Perfection” concerns the *status* of a *PPSA* security interest; it occurs upon the coincidence of attachment and a validly taken perfection step.²⁷ A secured party perfects its security interest in collateral in order to optimize its priority position vis-à-vis third parties. For a secured party to establish priority to any given collateral, it is generally necessary, though not always sufficient, that the security interest be perfected. Registration is the most common method used by secured parties to perfect security interests in goods.²⁸

Serial Numbered Goods

The second problem with the “seller in possession” statutory regimes of the Atlantic provinces concerns the regulatory provisions governing registration against a special class of goods, namely, “serial numbered goods.” Before pinpointing the issue, I must first describe the regulatory rules and their connection to the *PPSA* priority

²⁵ Legislators may wish to take the additional step of including confirmatory language for the deemed security interests involving accounts and chattel paper. To date, no province or territory has introduced such statutory language, but the case for its inclusion is equally compelling.

²⁶ Ronald CC Cuming et al, “Report to the Canadian Conference on Personal Property Security Law on Proposals for Changes to the Personal Property Security Acts” (prepared by a working group of the Canadian Conference on Personal Property Security Law and ratified at the CCPPSL Annual Meeting in Edmonton, Alberta, 21-23 June 2017) [Cuming et al, “CCPPSL Report”].

²⁷ *NBPPSA*, *supra* note 7, s 19; *NLPPSA*, *supra* note 7, s 20; *NSPPSA*, *supra* note 7, s 20; *PEIPPSA*, *supra* note 7, s 19.

²⁸ Cuming, Walsh & Wood, *supra* note 22 at 318.

scheme. I begin by reproducing the definition of “serial numbered goods”, set out in section 2 of New Brunswick’s *Regulations*:²⁹

“serial numbered goods” means a motor vehicle, trailer, mobile home, aircraft, boat or an outboard motor for a boat;³⁰

Serial numbered goods are characterized by their mobility and availability for resale in secondary markets. Each such good is inscribed, by its manufacturer, with a unique identification number that distinguishes it from all others.³¹ Registration by serial number facilitates enhanced *ex ante*³² discovery by subsequent searching parties who, due to their remoteness from the secured transaction, may not be in a position to discover the security interest by conducting a debtor name search. A remote party with knowledge of an item’s serial number can discover a prior interest via serial number search and thereby avoid or resolve any potential conflict from the outset of the acquisition-transaction. The personal property registry’s serial number functions enable registering parties to perfect their interests in serial numbered goods, and searching parties, whether immediate or remote, to discover such interests.³³

Variable Requirements

The *PPSA* expressly provides that a person may register a financing statement in the personal property registry in accordance with the *Regulations*.³⁴ The *Regulations*, in turn, impose detailed registration requirements³⁵ that vary depending

²⁹ *General Regulation*, NB Reg 95-57 [*NB Regulations*]; *Personal Property Security Regulations*, NLR 103/99 [*NL Regulations*]; *Personal Property Security Act General Regulations*, NS Reg 129/97 as amended by NS Reg 143/2015 [*NS Regulations*]; *Personal Property Security Act Regulations*, PEI Reg EC1998-270 [*PEI Regulations*].

³⁰ *NB Regulations*, *supra* note 29, s 2, “serial numbered goods”; *NL Regulations*, *supra* note 29, s 2(p); *NS Regulations*, *supra* note 29, s 2(1)(t); *PEI Regulations*, *supra* note 29, s 1(t).

³¹ Not all high-value goods bearing unique manufacturer-issued serial numbers constitute serial numbered goods (e.g. designer watches, electronic equipment, artwork, etc.). Goods of this nature are subject to the general collateral registration rules, and are only discoverable via debtor name search.

³² Translation: from before; before the event.

³³ Bangsund, “ABCD Remoteness Problems”, *supra* note 2.

³⁴ *NBPPSA*, *supra* note 7, s 43(1); *NLPPSA*, *supra* note 7, s 44(1); *NSPPSA*, *supra* note 7, s 44(1); *PEIPPSA*, *supra* note 7, s 43(1).

³⁵ *NB Regulations*, *supra* note 29, ss 23–25; *NL Regulations*, *supra* note 29, ss 23–25; *NS Regulations*, *supra* note 29, ss 23–25; *PEI Regulations*, *supra* note 29, ss 22–24.

on whether serial numbered goods are held by the debtor, at the moment of attachment,³⁶ as “consumer goods,”³⁷ “equipment”³⁸ or “inventory.”³⁹

Registration by serial number is currently⁴⁰ mandatory for consumer goods.⁴¹ Failure to register by serial number results in non-perfection of the security interest and loss of priority to an array of third party competitors including, most notably, the debtor’s trustee in bankruptcy.⁴²

Serial number registration is not a *de jure*⁴³ requirement for serial numbered goods held as equipment. Technically, it is optional.⁴⁴ However, failure to register by serial number leaves an equipment financier vulnerable to other secured parties, buyers, and lessees.⁴⁵ Since equipment financiers are heavily incentivized to register by serial number, this method of registration is a *de facto*⁴⁶ requirement for any secured party intent on optimizing its priority position.

Since commercial inventory is in constant flux, inventory financiers are not required to describe each item of inventory by serial number as it comes into the hands of the debtor. Such a system would be cost prohibitive and exceedingly labour intensive, requiring continual updating of the associated financing statement. Accordingly, for the sake of efficiency, the registration rules are relaxed for inventory

³⁶ *NBPPSA*, *supra* note 7, s 2(2); *NLPPSA*, *supra* note 7, s 3(2); *NSPPSA*, *supra* note 7, s 3(2); *PEIPPSA*, *supra* note 7, s 2(2).

³⁷ *NBPPSA*, *supra* note 7, s 1(1), “consumer goods”; *NLPPSA*, *supra* note 7, s 2(1)(i); *NSPPSA*, *supra* note 7, s 2(1)(i); *PEIPPSA*, *supra* note 7, s 1(1)(i).

³⁸ *NBPPSA*, *supra* note 7, s 1(1), “equipment”; *NLPPSA*, *supra* note 7, s 2(1)(p); *NSPPSA*, *supra* note 7, s 2(1)(p); *PEIPPSA*, *supra* note 7, s 1(1)(p).

³⁹ *NBPPSA*, *supra* note 7, s 1(1), “inventory”; *NLPPSA*, *supra* note 7, s 2(1)(x); *NSPPSA*, *supra* note 7, s 2(1)(x); *PEIPPSA*, *supra* note 7, s 1(1)(x).

⁴⁰ The Canadian Conference on Personal Property Security Law proposes alignment of the registration and priority rules governing consumer goods and equipment, which is to be attained via relaxation of the registration requirements for serial numbered goods held as consumer goods. See Cuming et al, “CCPPSL Report”, *supra* note 26 at 122–25 (Item III.1).

⁴¹ *NB Regulations*, *supra* note 29, s 23(1)(a); *NL Regulations*, *supra* note 29, s 23(1)(a); *NS Regulations*, *supra* note 29, s 23(1)(a); *PEI Regulations*, *supra* note 29, s 22(1)(a).

⁴² *NBPPSA*, *supra* note 7, s 20(2)(a); *NLPPSA*, *supra* note 7, s 21(1)(a); *NSPPSA*, *supra* note 7, s 21(2)(a); *PEIPPSA*, *supra* note 7, s 20(2)(a).

⁴³ Translation: as a matter of law.

⁴⁴ *NB Regulations*, *supra* note 29, s 23(1)(c); *NL Regulations*, *supra* note 29, s 23(1)(c); *NS Regulations*, *supra* note 29, s 23(1)(c); *PEI Regulations*, *supra* note 29, s 22(1)(c).

⁴⁵ *NBPPSA*, *supra* note 7, ss 30(6)–(7), 34(1), 35(4); *NLPPSA*, *supra* note 7, ss 31(6)–(7), 35(1), 36(4); *NSPPSA*, *supra* note 7, ss 31(6)–(7), 35(1), 36(4); *PEIPPSA*, *supra* note 7, ss 30(6)–(7), 34(1), 35(4).

⁴⁶ Translation: in point of fact.

financiers, who need only describe their serial numbered collateral in the general collateral field to gain optimal protection against third parties.⁴⁷

Potential Confusion

The above rules for registration in relation to serial numbered goods sensibly apply to conventional secured transactions and the other deemed secured transactions, but it is not altogether clear how they apply to a sale of goods without a change of possession. The problem is akin to that of the square peg and round hole. Here, our putative “debtor”⁴⁸—the seller in possession—has sold the goods to the initial buyer and, at the critical moment of attachment of the buyer’s deemed security interest (or the granting of any future true security interest),⁴⁹ holds the goods as bailed property, not as inventory, consumer goods or equipment *per se*.⁵⁰ A buyer under a sale of goods without a change of possession may be confused about the manner in which serial numbered goods are to be described in the financing statement—by serial number in the serial number field, or by item or kind in the general collateral field? In Canada’s sole Model 4 province, Prince Edward Island, the problem is exacerbated because the registration rules set out in the *PPSA Regulations* apply, *mutatis mutandis*,⁵¹ to the parallel “seller in possession” provisions of the *Factors Act*.⁵²

Plausible Interpretation in a Unique Context

In the unique context of a sale of goods without a change of possession, in which the seller occupies the bare role of bailee with no accompanying right to use or alienate the goods, one might embrace a modified interpretation of the existing registration requirements by focusing on the manner in which the seller/debtor held the goods *immediately prior* to the sale to the buyer out of possession. This interpretation, though probably mistaken, is likely to be adopted by all but the sharpest of legal minds. If adopted, it has the unfortunate effect of imposing more onerous registration requirements on buyers of consumer goods (who must register by serial number to gain perfected status) than on buyers of equipment and inventory (who gain

⁴⁷ *NB Regulations*, *supra* note 29, s 23(1)(e); *NL Regulations*, *supra* note 29, s 23(1)(e); *NS Regulations*, *supra* note 29, s 23(1)(e); *PEI Regulations*, *supra* note 29, s 22(1)(e).

⁴⁸ *NBPPSA*, *supra* note 7, s 1(1), “debtor”; *NLPPSA*, *supra* note 7, s 2(1)(m)(v); *NSPPSA*, *supra* note 7, s 2(1)(m)(v); *PEIPPSA*, *supra* note 7, s 1(1)(m)(v).

⁴⁹ *NBPPSA*, *supra* note 7, s 2(2); *NLPPSA*, *supra* note 7, s 3(2); *NSPPSA*, *supra* note 7, s 3(2); *PEIPPSA*, *supra* note 7, s 2(2).

⁵⁰ Translation: by or in itself; intrinsically.

⁵¹ Translation: with necessary changes.

⁵² *Factors Act*, RSPEI 1988, c F-1, s 9(2).

perfected status through mere general collateral description).⁵³ In any case, this alternate interpretation is inconsistent with express statutory language, which provides that “the determination as to whether goods are ‘consumer goods’, ‘inventory’ or ‘equipment’ shall be made as of the time the security interest attaches.”⁵⁴

Technical Interpretation: Equipment as the Residual Category

The more persuasive view is that since the goods are not held (or are no longer held) by the seller as consumer goods or inventory at the time of attachment, they must fall under the residual category of equipment.⁵⁵ While technically sound, this interpretation of the law assumes an inordinately high level of sophistication from the first buyer. Assuming he understands that the transaction is governed by the *PPSA* (a stretch in itself), this buyer must also appreciate that goods, held by the seller as either consumer goods or inventory, undergo instantaneous metamorphosis at the time of the sale, thereby necessitating different registration protocol. Regrettably, there is no reason to believe that many, let alone most or all, buyers possess this level of sophistication. Unlike the other deemed secured parties (i.e. commercial consignors, leasing companies, accounts factors and chattel paper financiers), who are specialized, highly sophisticated entities that regularly engage with the *PPSA* and its regulatory trappings, buyers represent a far more generalized class.⁵⁶ Suppose that the first buyer is a member of the general public (e.g. a librarian) who buys goods from a seller’s commercial inventory outside the ordinary course of business, leaving said goods in the seller’s possession. Will such buyer be astute enough to recognize that the associated registration in the personal property registry must be effected in accordance with the technical rules for equipment rather than inventory? His failure to appreciate this nuance may very well prove fatal to the proprietary claim. Commercial legislation is useful only if it is accessible to those whom it targets and affects.

Simplicity is a Friend to the Laws

Since *PPSA* priorities commonly hinge on fact and time of valid registration in the personal property registry, it is imperative that buyers, under sales of goods without a change of possession, be furnished with clear and coherent rules for registering notice of their deemed security interests. For the sake of simplicity, and to better enable such buyers to transact with confidence, I recommend that lawmakers in

⁵³ This anomaly will be addressed by any eastern province that relaxes the mandatory serial number registration rule for consumer goods as recommended by the Canadian Conference on Personal Property Security Law. See note 40.

⁵⁴ *NBPPSA*, *supra* note 7, s 2(2); *NLPPSA*, *supra* note 7, s 3(2); *NSPPSA*, *supra* note 7, s 3(2); *PEIPPSA*, *supra* note 7, s 2(2).

⁵⁵ *NBPPSA*, *supra* note 7, s 1(1): “equipment” means goods that are held by a debtor other than as inventory or consumer goods; *NLPPSA*, *supra* note 7, s 2(1)(p); *NSPPSA*, *supra* note 7, s 2(1)(p); *PEIPPSA*, *supra* note 7, s 1(1)(p).

⁵⁶ Bangsund, “ABC Prequel”, *supra* note 3 at 258.

New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island adopt a regulatory provision mandating that, in respect of a sale of goods without a change of possession, serial numbered goods be described in the serial number collateral field of the financing statement: *simplicitas est legibus amica*.⁵⁷ Section 18 of Saskatchewan's *Regulations*,⁵⁸ reproduced below, is a model of such a provision:

When a registration authorized pursuant to *The Sale of Goods Act*, *The Factors Act*, *The Commercial Liens Act* or Part V.1 of *The Summary Offences Procedure Act*, 1990 is to be effected:

- (a) goods that are serial numbered goods are to be described pursuant to section 13; and
- (b) goods other than serial numbered goods are to be described by item or kind.

Best Practice

Fortunately, for any buyer under a sale of serial numbered goods without a change of possession (and for a buyer without possession governed by Prince Edward Island's *Factors Act*), the regulatory obstacles highlighted above are easily surmounted. To avoid registration invalidity, a diligent buyer under a sale of serial numbered goods without a change of possession should, *ex abundanti cautela*, describe her collateral in both the serial number description field and general collateral description field of the financing statement. By adopting this best practice, she jettisons any argument that a third party, like a trustee in bankruptcy, could possibly mount on grounds of technical non-compliance with the *Regulations*.

IV. Conclusion

I reemphasize that the proposals set forth in this article are contingent in nature, representing a mere second-best solution to the problems I have identified. For the reasons given in my recent article in the *Dalhousie Law Journal*,⁵⁹ I think that legislators in the Atlantic provinces should consider adopting a statutory system similar to that of western and northern Canada, incorporating personal property registry infrastructure into the priority governance of seller in possession title disputes without bringing such disputes under the strict purview of the *PPSA*. If, however, lawmakers in New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island reject my principal recommendation, then the solutions proposed in this article should be contemplated in the alternative. Implementation of these modest proposals would clarify and simplify the law, and better enable buyers to navigate the uniquely treacherous waters of delayed-possession sales in Atlantic Canada.

⁵⁷ Translation: simplicity is a friend to the laws.

⁵⁸ *The Personal Property Security Regulations*, RRS c P-6.2, Reg 1.

⁵⁹ Bangsund, "ABC Prequel", *supra* note 3.