

ATLANTIC PERSONAL PROPERTY NEWS

Issue No. 1

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The contents of this newsletter are provided as a public service only. While every effort has been made to ensure that this conforms to the legal requirements as stated in the PPSA and the Regulations, it does not have any legal effect, and it is not intended to represent a legally-binding opinion in any way. Reliance on the contents is at the user's sole risk and option. All questions arising from the newsletter are to be addressed by referring to the legislation or by consulting an individual with the appropriate legal expertise.

Welcome to the inaugural edition of the Atlantic Personal Property Registries Newsletter. The Atlantic Personal Property Registrars have formed a committee to ensure an effective co-operative regional operation of an integrated Personal Property registry regime for Atlantic Canada. In that capacity, we recognize clients often have similar questions and need information about the electronic registry. We also believe that communication with our clients is instrumental to the efficient operation of our registries. As this is our first edition, please give us your comments, especially on what your needs are.

How to reach us:

ACOL Client Support Centre -

www.acol.ca
1-888-624-ACOL

New Brunswick Registry -

www.gnb.ca/snb/e/1000/1012e.htm
1-506-444-5510

Newfoundland and Labrador Registry -

www.gov.nf.ca/gsl/cca/cr/personal_property_registry.stm
1-709-729-3300

Nova Scotia Registry -

www.gov.ns.ca/snsmr/property/
1-902-424-4203

Prince Edward Island Registry -

mmmacdonald@gov.pe.ca
1-902-368-6001

ACCURATE ENTRY OF DEBTOR NAME INFORMATION

The *Personal Property Security Act* (PPSA) regulations of each of the four Atlantic Provinces outline how to enter debtor name information on-line. Please note that users are responsible for accurate entry of registration and search criteria into the electronic registry. Failure to follow the protocol may jeopardize the validity of the registration or the accuracy of the search results.

Upon review of the registrations, we have noted that not all clients are strictly adhering to the prescribed name protocol. Under the PPSA, this has considerable consequences for the secured party. More specifically, if the name of the debtor is not disclosed on a search of the database using the *correct* debtor name, the error will be treated as “seriously misleading,” invalidating the registration. An invalid registration means the security interest is “unperfected.” An unperfected security interest is ineffective against the debtor’s trustee in bankruptcy and other secured parties (other secured creditors, buyers and lessees of the collateral, and judgment creditors who have registered a notice of judgment). As a result of this loss of priority, the secured creditor will no longer be able to assert priority on the collateral should the debtor dispose without authority to a third party, become insolvent, or have

enforcement proceedings initiated against the assets by another creditor. Effectively, the secured party will have lost the value of the collateral as a source of repayment of the secured debt should there be any third party claimants.

To assist users in entering name data, we have highlighted key problem areas and the corresponding rules. It should be emphasized that these same rules also apply:

- ▶ to the entry of the debtor's name for the purposes of conducting a search of the Registry database; and
- ▶ to non-PPSA registrations made in the Personal Property Registry (e.g. to the entry of an individual judgment debtor's name for the purposes of registering a notice of judgment).

Debtor Name Protocol Rules:

Warning: *This following summary of the applicable rules is provided as a public service only. While every effort has been made to ensure that this summary conforms to the legal requirements as stated in the PPSA and the Regulations, it does not have any legal effect, and it is not intended to represent a legally-binding opinion in any way. Reliance on these rules is at the user's sole risk and option. All doubts should be resolved by reference to the legislation.*

- ▶ Enter the **last name** followed by the **first name** following by the **middle name**, if any, in the fields specified for each.
 - ▶ Example: Walsh John William
- Do not enter
- John William Walsh
 - Walsh, John W.
 - Walsh J W
 - Walsh John
 - Walsh J
 - Walsh J. William
 - Walsh William John
- ▶ Do **not** use **initials** for any part of the name.

- ▶ Note also that the system is sensitive to capital and small letters and accented characters. Entries that would match except for case and accents would show up as a close match on a search result. This may be confusing for the searcher, particularly if the list of close matches is a lengthy one. If this occurs, the registrations may be challenged as misleading. To avoid the problem, strive for case sensitive entries.
- ▶ If the debtor has more than one middle name, enter **only the first of the middle names** in the field specified for middle names.
- ▶ If the debtor's name consists of **only one word**, enter that word in the field specified for entering the **last name of the debtor**.
- ▶ Under the **Regulations**, determination of the **debtor's legal name** for registration and searching purposes is governed by the rules set out below. To avoid any challenge to the validity of the registration, these rules **must be followed**. If the debtor goes by a popular name (e.g. nickname or a shortened form), a registrant **may** also enter the name as an **additional separately-identified debtor**.

The rules governing the determination of the debtor's legal name for registration and searching purposes can be found in sections 20 and 21 of the Nova Scotia regulations, and in sections 19 and 20 in PEI, New Brunswick, and Newfoundland and Labrador. To avoid any challenge, we encourage all users to review these provisions to ensure legislative compliance.

PPR TRANSITION PERIOD EXPIRY DATES

The personal property registration transition period is the period of time during which prior security interests, which were registered under prior registration law, were to remain effective under the *Personal Property Security Act*

(PPSA) system. Section 74 of the PPSA provides that, subject to the Act, a security interest registered under prior registration law is deemed to have been registered and perfected under the PPSA until the expiration of its registration under the prior registration law or the expiration of the legislated transition period.

This is to remind all users who may have security interests registered under prior registration law that these interests must now be registered on or before **December 12, 2001 for Newfoundland and Labrador** in order to remain effective. The PEI transition period ended on April 26, 2001.

SECURED PARTY ADDRESS

Pursuant to legislative requirements in all Atlantic provinces for secured party information, the secured party is required to provide an address when registering financing statements. This address is critical for several reasons. First, third parties rely on the address for making demands to view general security agreements and to request compulsory discharges. Further, a registrar is required to send a notice of discharge, amendment or global change to a secured party, when the financing statement has been filed by a registrant on behalf of that third party. If the address is not correct, the secured party will not receive this notice, which could ultimately affect priority or the effectiveness of a registration.

If a secured party has multiple registrations and subsequently has an address change, the address on the registrations can be effectively changed by requesting a global change of address in accordance with the regulations.

PARTIAL DISCHARGES

Often, a collateral description must be updated when a portion of the secured property in the original registration is to be released from being security. Uncertainty has arisen as to how this partial discharge should be described on the system. From a review of the Regulations for all provinces, the Registrars agree that the report does not distinguish between different types of amendments to collateral—discharges, additions, and changes. We suggest general collateral description amendments should be updated to clearly indicate the current collateral applicable at the time of the amendment. In the case of a partial discharge, you would restate the description in the original, referencing as “excluded” the collateral subject to the discharge. The Registrars are reviewing the possibility of amending the regulations to reduce any possible confusion. Notes can also be made in the *additional information* field on the Financing Change Statement.

ENTERING FRENCH-LANGUAGE CHARACTERS

Some ACOL functions and applications support entry of French-language characters into text fields.

- ▶ If you are using a French-language keyboard, see Windows Help for configuration of your system to support entry of French-language characters.
- ▶ For entry of French-language characters using an English-language keyboard and an English version of Windows, refer to the table on page 4.

To enter characters in Windows, hold down the *Alt* key and type the four-digit decimal code.

Table 1—Special Character Coding for Canadian French in ISO-Latin-1 Character Set

Long Descriptive Name	Character	Decimal Code
Latin Small Letter A with Grave	à	0224
Latin Capital Letter A with Grave	À	0192
Latin Small Letter A with Circumflex	â	0226
Latin Capital Letter A with Circumflex	Â	0194
Latin Small Letter E with Acute	é	0233
Latin Capital Letter E with Acute	É	0201
Latin Small Letter E with Grave	è	0232
Latin Capital Letter E with Grave	È	0200
Latin Small Letter E with Circumflex	ê	0234
Latin Capital Letter E with Circumflex	Ê	0202
Latin Small Letter E with Diaeresis	ë	0235
Latin Capital Letter E with Diaeresis	Ë	0203
Latin Small Letter I with Circumflex	î	0238
Latin Capital Letter I with Circumflex	Î	0206
Latin Small Letter I with Diaeresis	ï	0239
Latin Capital Letter I with Diaeresis	Ï	0207
Latin Small Letter O with Circumflex	ô	0244
Latin Capital Letter O with Circumflex	Ô	0212
Latin Small Letter U with Grave	ù	0249
Latin Capital Letter U with Grave	Ù	0217
Latin Small Letter U with Circumflex	û	0251
Latin Capital Letter U with Circumflex	Û	0219
Latin Small Letter U with Diaeresis	ü	0252
Latin Capital Letter U with Diaeresis	Ü	0220
Latin Small Letter C with Cedilla	ç	0231
Latin Capital Letter C with Cedilla	Ç	0199
Left-Pointing Double Angle Quotation Mark	«	0171
Right-Pointing Double Angle Quotation Mark	»	0187

The *Atlantic Personal Property News* can be found on the ACOL web site at www.acol.ca.