



## PERSONAL PROPERTY REGISTRATIONS: CORRECTLY IDENTIFYING THE DEBTOR

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### IDENTIFYING THE DEBTOR

The Personal Property Registry (the “PPR”) is akin to a bulletin board on which you, as a secured creditor, can post public notice of a security interest you have in a debtor’s personal property. The debtor may be an individual or an artificial body (eg. a corporation or a partnership). In either case, it is paramount that you correctly identify the debtor in the PPR. If your registration is “seriously misleading”, it will be invalid and your security interest will not be “perfected” under the *Personal Property Security Act* (the “PPSA”).

The *Personal Property Security Regulation* (the “PPSR”) sets out rules for determining the “name” of the debtor and registering that name in the PPR. For a corporation, one must simply register against the name referenced in the corporation’s profile report or certificate of incorporation. For various reasons, however, correctly identifying the name of an individual is often more difficult. First, women commonly adopt their husband’s surname upon marriage. Secondly, many individuals are commonly referred to by a nickname, a middle name or a less formal version of their legal name (eg. “Bill” for “William”). Perhaps the entire community refers to Greg Applegate as “Gator”. Michael Donald Anderson may prefer to be called “Donald” rather than “Michael”. Further complicating matters, Michael’s driver’s license may simply disclose his name as “Donald Anderson”. The PPSR sets formal rules for determining the individual’s name and registering against that name in the PPR. Knowing these rules, and designing and adhering to lending practices that properly address them, will help you avoid the pitfalls of the PPR and ensure that you don’t fall into the category of an “unperfected” secured creditor.

### RULES FOR DETERMINING THE DEBTOR’S NAME

#### *General Rules*

Assuming the debtor was born in Canada, the “default” rule is that her name is that disclosed on her birth certificate. If a birth certificate was never issued to the debtor (or her birth certificate was lost or misplaced), the debtor’s name is that disclosed on her passport. If she does not have a passport, the name is that disclosed on her social insurance card. If she does not have a social insurance card but has a passport issued by a non-Canadian jurisdiction, the name disclosed on that passport will be determinative.

Birth Certificate → Passport → Social Insurance Card → Foreign Passport

#### *Name Changes: Marriage and Otherwise*

If the debtor changed her name after marriage or in accordance with legislation respecting name changes, the name adopted after marriage (if recognized in the jurisdiction in which the individual habitually resides) or stated on the debtor’s name change certificate will be determinative. If the law of the jurisdiction in which the individual habitually resides allows the person to use both her pre-marriage and post-marriage names, both names must be disclosed in the registration.

#### *Individuals Born Outside of Canada*

Note that additional rules determine the names of individuals born outside of Canada.

If the individual was born outside of Canada, but is a Canadian citizen, the name is that stated on her citizenship certificate.



*Canadian Citizen* → Citizenship Certificate

If the individual was born outside of Canada and is not a Canadian citizen, the name is that disclosed on her government visa. If she was not granted a government visa, the name is that stated on her international passport. If she does not have either a government visa or an international passport, the name is that stated in the birth certificate (or equivalent document) issued by the government agency in the country in which she was born.

*Foreign Citizen* → Government Visa → International Passport → Foreign Birth Certificate

***When All Else Fails***

If none of the abovementioned rules assist in the determination of the debtor's name, her name is that stated on any two of the following documents:

- Current motor vehicle operator's license;
- Current vehicle registration;
- Current medical insurance card.

***Practical Recommendations***

Determining the debtor's name should be a simple matter. For an individual born in Canada, simply demand that she provide you with the available identification document *highest* on the following list:

- Birth certificate;
- Passport;
- Social Insurance Card;
- Foreign Passport (if applicable);
- Marriage License or Name Change Certificate;
- Driver's License;
- Vehicle Registration;
- Medical Insurance Card.

For a Canadian citizen born outside of Canada, demand that she provide you with her Citizenship Certificate. If the individual is not a Canadian citizen, and was born outside of Canada, demand a copy of the available identification document *highest* on the following list:

- Government Visa;
- International Passport;
- Foreign Birth Certificate;
- Driver's License;
- Vehicle Registration;
- Medical Insurance Card.

**RULES FOR REGISTERING AGAINST THE DEBTOR'S NAME**

In registering against the individual's name in the PPR, the PPSR requires that the financing statement (ie. the registration document) set out, in the designated field, the last name of the debtor, followed by the individual's first name and middle name, if any. If the individual has more than one middle name, the first of the middle names must be specified.



If the individual’s name does not consist of both a first name and a last name (eg. “Cher”), her name must be disclosed in the field designated for the individual’s last name. If the name includes a designation such as “Junior” or “the Third”, that designation must be specified following the first name.

The following chart provides examples of how to properly register against an individual in the PPR. The left column contains the individual’s full legal name, as determined by using the rules described in Part B of this document. The second, third and fourth columns represent the fields that appear on the computer screen when effecting a PPR registration.

INDIVIDUAL’S FULL LEGAL NAME	PPR FIELDS		
	Last Name	First Name	Middle Name
<i>Michael Jordan</i>	Jordan	Michael	
<i>Davis Love III</i>	Love	Davis III	
<i>Madonna</i>	Madonna		
<i>Harold Lewis Schoepp</i>	Schoepp	Harold	Lewis
<i>John Spence Alan Orr</i>	Orr	John	Spence
<i>Cameron Patrick Johnson Jr.</i>	Johnson	Cameron Jr.	Patrick

Note that you may register against “additional debtor names” in the same financing statement. Therefore, if you remain unsure of how to identify your debtor, register against as many variations of the debtor’s name as necessary to ensure proper identification in the PPR. Also, be sure to enter the debtor’s date of birth in the designated field. This will distinguish John Anderson, born on April 16, 1949, from John Anderson, born on December 3, 1985.

**THE INTERPLAY BETWEEN THE PPSA AND THE PPR**

As a prospective secured creditor, you will typically have dual concerns:

Determining whether another creditor has registered a security interest in the debtor’s personal property (ie. determining whether the debtor’s collateral is already encumbered); and

Perfecting your security interest in the debtor’s personal property (ie. ensuring you perfect your security interest and maintain priority to the debtor’s collateral).



### ***Due Diligence: Determining Your Priority***

You must first determine the proper legal name of the debtor using the rules described in Part B of this document. Secondly, you should conduct a PPR search (in accordance with Part C of this document) to determine whether any other creditor has registered against the debtor's name.

If a PPR search discloses no matches, you will be assured of priority once you register with the PPR. If a PPR debtor name search discloses "similar matches", you must examine these registrations to determine whether they are referring to your debtor. If there is any doubt, you should err on the side of caution and conduct further investigations to determine whether these registrations were intended to perfect a security interest in your debtor's personal property. If the PPR debtor name search discloses "exact matches", you must determine whether to proceed with the transaction or consider seeking subordination agreements from the previously registered creditors.

### ***Registration: Perfecting Your Security Interest and Ensuring Your Priority***

Your registration must not be "seriously misleading" if you wish to be a perfected secured creditor. Using the rules above will ensure that you properly identify and register against the debtor. Simply put, if you properly adhere to the rules above, you will not have a "seriously misleading" error in your registration. Hence, your security interest will be "perfected".

### ***Priority Competitions: An Error In Your Registration***

But what if you do make a mistake in registering against the debtor's name? Will your mistake render your registration invalid? The answer – "Not necessarily". Provided that your mistake is not "seriously misleading", your registration will be valid and you will remain a perfected secured creditor.

The next logical question, then, is how you know whether a registration error is "seriously misleading". The answer is based both on the mechanics of the electronic PPR and the relevant case law, and varies from jurisdiction to jurisdiction. A seriously misleading error in Alberta may not be seriously misleading in Saskatchewan, both by virtue of "case law principles" and the peculiarities of the electronic PPR systems adopted in each province. Below are several principles that will be of assistance to you in navigating this complex area of law.

The PPR search result is the fundamental mechanism used to determine whether a registration is "seriously misleading". Conducting a debtor name search in the PPR will reveal a list of all "exact matches" and "similar matches".

#### *Exact Matches*

Obviously, a registration that is revealed as an "exact match" is valid (ie. the registration is not "seriously misleading").

#### *Similar Matches*

A registration revealed as a "similar match" *may* be "seriously misleading"; the registration is not necessarily invalid. The PPSA provides a measure of leniency to secured creditors using the PPR. The question is whether a searcher could reasonably conclude that the "similar match" referred to the debtor. If so, then the registration is not seriously misleading and the registration is valid. However, if a searcher could not reasonably conclude that the similar match referred to the debtor, then the registration error is seriously misleading, thereby invalidating the registration.

#### *No Matches*

Finally, if a debtor name search does not disclose the registration as an "exact match" or a "similar match", then such registration must be seriously misleading because a third party searching the PPR would have no hope of discovering it. Judges have not always applied this rule so exactly, but from a practical perspective, a registration that is neither disclosed as an "exact match" or a "similar match" is seriously misleading.



### *Summing It All Up*

As a rule, your registration should be disclosed as an “exact match” upon conducting a debtor name search. At the very least, you will want to ensure that it is revealed as a “similar match”. In this case, the registration may be valid. But if your registration is not disclosed in the results of a debtor name search, such registration is almost certainly “seriously misleading” and as a result, you are an unperfected secured creditor and thus vulnerable to losing priority to other lenders, third party purchasers and trustees in bankruptcy.

### **CONCLUSION**

As illustrated in this paper, the seemingly simple matter of identifying and registering against an individual in the PPR can be more problematic than one would think. Gaining familiarity with the rules and the peculiarities of the PPR will put you in good stead respecting your security.

### **\*\*NOTE TO READER\*\***

This paper is solely focused on the rules and peculiarities of the Alberta *Personal Property Security Act*, *Personal Property Security Regulation*, and Personal Property Registry. Each Canadian jurisdiction has its own version of the *Personal Property Security Act*, regulations, and electronic personal property registry system. Although the law in most jurisdictions is similar to that of Alberta, each jurisdiction has its own features and peculiarities. As such, **DO NOT** rely on this paper to effect personal property registrations outside of Alberta.