

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

**SHOULD CANADIAN JURISDICTIONS IMPLEMENT
CERTIFICATE OF TITLE SYSTEMS FOR MOTOR VEHICLES?**

**by Professor Ronald C.C. Cuming, Q.C.
College of Law, University of Saskatchewan,
Saskatoon, Saskatchewan.**

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, have not been adopted by the Uniform Law Conference of Canada. They do not necessarily reflect the views of the Conference and its Delegates.

**Edmonton, Alberta
August, 2006**

SHOULD CANADIAN JURISDICTIONS IMPLEMENT CERTIFICATE OF TITLE SYSTEMS FOR MOTOR VEHICLES?

I. FOCUS OF THE PAPER

[1] This research paper has been prepared at the request of the Uniform Law Conference Commercial Law Strategy Supervisory Committee. The author was asked to examine the need for and feasibility of certificate of title systems for motor vehicles in Canada.

[2] No jurisdiction in Canada has implemented a certificate of title system. Should a Canadian jurisdiction decide to do so, it is very likely that the system would be patterned on or, at the very least, be conceptually and structurally based on one of the various types of certificate of title systems implemented in States of the United States. While all States have enacted certificate of title systems, they are not uniform. Most are paper-based systems that provide for a physical certificate of title for each motor vehicle. A few others provide for modern electronic recordation of ownership. Not all systems apply to the same types of motor vehicles.

[3] It has not been necessary for the purposes of this paper to record and assess the several “types” of state systems. It has been sufficient to focus on the 2005 Uniform Certificate of Title Act prepared by the National Conference of Commissioners on Uniform State Law.¹ This model Act has been designed to encourage a higher degree of uniformity among state systems.

[4] A factor that influenced the development and current form of certificate of title systems in the United States was the lack of sophisticated systems for publishing security interests that have prevailed in most states until very recently. It is for this reason that certificate of title systems address not only ownership but, as well, security interests in motor vehicles. This is so, even though many States now have modern, efficient electronic systems for publication of security interests that could be, but have not been, applied to security interests in motor vehicles other than vehicles held as inventory.

UNIFORM LAW CONFERENCE OF CANADA

II. WHAT IS A CERTIFICATE TITLE SYSTEM?

[5] A certificate of title system for motor vehicles can be conceptually analogized to a Torrens system for land titles. It is a system that, for the most part, is based on the simple proposition that “what you see (on a title certificate) is what you get.” A person who is disclosed as owner in the records of the relevant authority or the paper title issued by the authority is in law the owner of the vehicle. Section 16 of the 2005 Uniform Certificate of Title Act provides that “... a transfer of ownership without execution of a certificate of title or certificate of origin is not effective as to other persons [i.e., other than the transferor or transferee] claiming an interest in the vehicle.” Furthermore, a security interest in the vehicle not disclosed in the registry records or on the title to the vehicle cannot be asserted against anyone who buys or obtains a security interest in the vehicle. Section 19 of the Act provides that a transferee of ownership takes subject to a security interest in the vehicle indicated on a certificate of title.... If ... the office [responsible for the issue of certificates of title] creates a certificate of title that does not indicate that the vehicle is subject to a security interest ... a buyer of the vehicle ... takes free for the security interest if the buyer gives value in good faith, receives possession of the vehicle and obtains execution of the certificate of title... and the security interest is subordinate to a conflicting security interest in the vehicle which is perfected after creation of the certificate of title and without knowledge of the secured party’s knowledge of the security interest.”

III. UNITED STATES EXPERIENCE

[6] All states of the United States have some form of title certificate system for motor vehicles. Professor Gilmore² notes that State automobile registration statutes were originally designed as a mechanism to raise revenue for State governments. As is the case with their current Canadian counterparts, car owners were required to obtain a registration certificate in order to have the right to operate the vehicle on public

SHOULD CANADIAN JURISDICTIONS IMPLEMENT CERTIFICATE OF TITLE SYSTEMS FOR MOTOR VEHICLES?

roadways. However, as early as the 1920's the dramatic increase in automobile theft induced legislators to look to the registration certificates as a method to limit the transferability of stolen vehicles. In many States, certificates of registration were turned into titles.³ A 1955 Uniform Motor Vehicle Certificate of Title and Anti-Theft Act prepared by the National Conference of Commissioners on Uniform State Law was ultimately adopted in several States. However, the continued lack of uniformity among state systems, the need to accommodate electronic registration as a substitute for paper titles and the importance of accommodating to changes in Article 9 of the Uniform Commercial Code (secured transactions law) induced the Conference to adopt a new Uniform Certificate of Title Act in 2005.

IV. POLICY CONSIDERATIONS

[7] The principal policy basis for certificate of title legislation is to provide certainty with respect to legal ownership of motor vehicles. This certainty is important to law enforcement agencies, both private and commercial buyers of vehicles, secured creditors and unsecured creditors of persons who assert ownership in vehicles that are offered as security or are being seized through judgment enforcement proceedings. Motor vehicles are highly mobile and can be readily moved from one jurisdiction to another. Most motor vehicles have high unit value compared to other kinds of personal property and represent a significant investment on the part of buyers. They are one of the most common types of collateral in secured lending in Canada principally because most buyers must finance the purchase of motor vehicles, and credit grantors look to security interests in these vehicles as an important risk reduction measure. Clearly, therefore, significant uncertainty as to the ownership of motor vehicles can be very detrimental to Canadians and to commercial activity in Canada.

[8] If there is sufficient uncertainty as to ownership under current law as to cause frequent losses and disruption in the economy, implementation of certificate of title systems should be considered by Canadian legislators.

UNIFORM LAW CONFERENCE OF CANADA

[9] It has not been possible in the context of this paper to conduct empirical investigations as to the extent of loss and economic disruption that results from the lack of certificate of title systems in Canada. While it can be assumed that some does occur, the determination as to whether or not to proceed with implementation of such systems involves not only assessing the efficacy and limitations of the systems in addressing the problem, but as well the logistical difficulties and financial costs associated with their design, implementation and maintenance. Clearly, legislators in the United States are satisfied that, on balance, certificate of title systems provide benefits that justify the cost and inconvenience involved. However, notwithstanding a great deal of similarity between the laws and commercial practices of States of the United States and those of Canadian jurisdictions, it would be unwise, without more, to conclude that such systems should be implemented in Canada.⁴

IV. EVIDENCE OF OWNERSHIP OR PRIOR INTERESTS UNDER CURRENT CANADIAN LAW

1. The Supremacy of *Nemo Dat*

[10] A fundamental principle of Canada law (both common law and Quebec civil law), stated in Latin as *nemo dat quod non habet*,” is that a person (transferor) cannot give a better title (ownership) to movable property to a transferee than the transferor has unless the transferor is authorized (or, in very limited circumstances, is deemed by law to be authorized) by the owner to act on the part of the owner in transferring the owner’s title. With minor exceptions,⁵ this is so even though the sale is between a consumer and a seller who is licenced to carry on the business of selling motor vehicles. As a result of the *nemo dat* principle, a buyer of a used motor vehicle and a creditor who takes security interests in a vehicle must bear the risk that the person offering the vehicle for sale or as collateral is not the owner of it and, consequently, is legally incapable of transferring ownership to a buyer or creating a security interest that has priority over the interest of the vehicle owner.

SHOULD CANADIAN JURISDICTIONS IMPLEMENT CERTIFICATE OF TITLE SYSTEMS FOR MOTOR VEHICLES?

2. Registration of “Ownership” under Motor Vehicle Registration Legislation

[11] The magnitude of the problem for buyers and creditors resulting from *nemo dat* principle is conditioned by the availability of measures to buyers and secured creditors through which they can determine in most cases, if not in all cases and not always with complete certainty, whether the motor vehicle offered for sale or as collateral is owned by the seller or debtor claiming to be its owner. If such facilities, although not as effective as a certificate of title system, are available, the risk in transactions involving motor vehicles may be viewed as acceptable when balanced against the limitations of a certificate of title system and the costs of creating one.

[12] All provincial and territorial jurisdictions in Canada provide for “registration” of a wide range of motor vehicles. A registration (which accompanies the issue of a permit with respect to a vehicle) identifies the “owner” of the vehicle and records other information relating to it.⁶ The registering authority generally requires production of the documentation it considers necessary to enable it to determine whether a permit should be issued⁷ and keeps records of “owners” of vehicles with respect to which permits have been issued.⁸ However, these systems have not been designed to be and do not function as ownership registries. The registration of “ownership” as provided by this legislation does not result in the legal conclusion that a “registered owner” is the legal owner of the vehicle. In some provinces, highway traffic legislation clearly distinguishes “registered owner” from owner under general law.⁹ In others, there is a *prima facie* presumption that the registered owner is the legal owner for the purposes of the policies implemented by the legislation. However, the courts have recognized that the determination of ownership for the purposes of highway traffic legislation does not control the outcome of a dispute as to who is the owner of the vehicle where the issue is not one addressed in the legislation.¹⁰ They have recognized that there can be more than one “owner”, the “legal” owner and the owner deemed to be such for the purposes of the highway traffic legislation.¹¹ These purposes generally include collection of revenue, setting liability for

UNIFORM LAW CONFERENCE OF CANADA

damages caused by the operation of a vehicle¹² and, in some provinces, public auto insurance systems that provide insurance coverage.¹³

[13] Although motor vehicle registration systems were not designed to provide protection to buyers and creditors from the effects of the *nemo dat* principle, it has been recognized in several Canadian jurisdictions that the vehicle registration records held by government agencies pursuant to highway traffic legislation can be of assistance to buyers in reducing the risk of loss when buying used motor vehicles. In several jurisdictions, these records are made available to the public.¹⁴ However, as a result of legislative restrictions on release of “private information”, in most jurisdictions information relating to the registration history of a motor vehicle is available only to the registered owner of the vehicle,¹⁵ and in some jurisdictions, the identity of prior owners is not revealed. In others this facility is not available under any circumstances.¹⁶

[14] Clearly, the availability of vehicle registration information is not a complete substitute for a certificate of title system. Even if the all of the recorded information relating to a vehicle is available to a potential buyer, there is no legal assurance that it is accurate or that the person identified as registered owner is a legal owner for the purposes of the *nemo dat* principle. However, in the great bulk of cases, the information will be sufficient to protect buyers. A buyer is at risk principally in a case where the vehicle has been stolen from the owner and registered by the thief. In most cases, the owner or police will have notified the vehicle registry of the theft. There is greater likelihood of risk in cases where the vehicle has been stolen in one jurisdiction and taken to another jurisdiction and registered using false or forged documentation.

3. Registration of Security Interests and Liens on Motor Vehicles

[15] One of the functions of the certificate of title systems of the kind implemented in States of the United States is to provide a method through which potential buyers or secured credit grantors can discover the existence of security interests and liens against motor vehicles to which any interests they acquire would be subordinate. In this context

SHOULD CANADIAN JURISDICTIONS IMPLEMENT CERTIFICATE OF TITLE SYSTEMS FOR MOTOR VEHICLES?

the risk is not that the seller does not own the vehicle. The risk is that the seller's interest in the vehicle is subject to a security interest or charge that can be enforced against a buyer of the vehicle or a secured party who takes a security interest in it.

[16] This function is currently addressed in all Canadian jurisdictions through modern, efficient systems for publication of security interests in motor vehicles that are at least as efficient as any existing certificate of title system in the United States. Registrations in provincial or territorial systems relating to most motor vehicles can be retrieved by obtaining a search result using the serial (VIN) of the vehicle.¹⁷ Consequently, the risk associated with acquiring an interest in a motor vehicle subject to any of the kinds of interests that must be registered under personal (movable) property security (hypothec) law, are very small.

[17] A person wishing to purchase or take a security interest in a motor vehicle in any jurisdiction in Canada can readily obtain¹⁸ a search result.¹⁹ Any security interest or registerable lien²⁰ or charge affecting the vehicle must be disclosed in the search result if the buyer's or creditor's interest is to be subject to it.²¹

V. IMPLICATIONS OF A US-STYLE CERTIFICATE OF TITLE SYSTEM IN A CANADIAN CONTEXT

1. Electronic Record or Paper Title (or both)

[18] The NCCUSL 2005 Uniform Certificate of Title Act provides for titles in the form of either an electronic record or paper title. This was necessary in order to recognize that some states that now have only paper title systems are unlikely in the immediate future to invest in new infrastructure required to accommodate electronic record titles. It is inconceivable that any Canadian certificate of title system would be paper-based.

2. The Scope of the Law

[18] An important issue that must be addressed is the kinds of motor vehicles to which a certificate of title law applies.²² An ever-increasing variety of different types of motor vehicles with high unit value and for which there are active second-hand markets are being used by Canadians. A policy decision would have to be made whether buyer and creditor protection in the context of all of these vehicles is of sufficient importance to warrant the creation of registries for each of them and to require that titles be obtained by their owners. In order for a provincially-based system to operate effectively on a national basis, it would be necessary for all jurisdictions to give the same scope to each of their systems.

[19] A very important issue that would have to be addressed should a title registration system be implemented in Canadian jurisdictions is whether the systems would apply to vehicles that are now in the possession of persons claiming to be owners or only to new vehicles sold after the registration law comes into effect. One approach is to have the new system applicable to new vehicles purchased or manufactured after a specified future date. If this approach were adopted, the certificate of title system would be of only limited, but increasing, value for a period of approximately 10 years. The alternative approach is to bring all currently registered motor vehicles into the system. However, since in law a currently registered owner is not necessarily the legal owner for the purposes of the *nemo dat* rule, it would not be possible to take current motor vehicle registry records as the basis on which to conclusively presume ownership of vehicles. It would be necessary to require that all vehicles be registered under the new system on the basis of proof of ownership supplied by the applicant.

3. Choice of Law and Recognition Rules

[20] Ownership of motor vehicle is constitutionally a matter of property and civil right with the result that it is not possible to have a single national system based on federal legislation. As is currently the case with registration of ownership under motor vehicle

SHOULD CANADIAN JURISDICTIONS IMPLEMENT CERTIFICATE OF TITLE SYSTEMS FOR MOTOR VEHICLES?

legislation, there would have to be thirteen separate title registry systems in Canada. This being the case, it would be necessary to have a uniform set of choice of law rules regulating issues such as: (i) determination of the jurisdiction under whose law a vehicle is to be registered as to ownership²³ and the recognition in all jurisdictions of ownership created under the system of the relevant jurisdiction for registration; and (ii) registration in the context of newly manufactured vehicles or vehicles brought into Canada from a foreign country (e.g., United States or Mexico).

4. Administrative Structures

[21] In view of the very large number of motor vehicles acquired in Canada each year, a certificate of title system would entail a great deal of administration. It is conceivable that current motor vehicle registration systems could be converted to certificate of title systems. However, this would involve significant restructuring and changes in the law but would not require reallocation of administrative roles to a different agency.

5. Application of System to Security Interests

[22] Most of the legal complexity addressed in the 2005 NCCUSL Uniform Certificate of Title Act is associated with the use of the certificate of title system to provide public notice of the existence of security interests and liens on motor vehicles.²⁴ The Act deals not only with the mechanics of recording security interests against motor vehicle titles and discharging such records,²⁵ but also coordination with aspects of Article 9 of the Uniform Commercial Code, including choice of law rules²⁶ and priority rules applicable to competing claims of secured creditors and buyers, and of two or more secured creditors.²⁷

[23] In all Canadian jurisdictions, the legal structures and administrative responsibilities for registering vehicle “ownership,” on the one hand, and security interests (and liens) on the other, are completely separate. Canadian secured transactions registries are the most advanced and efficient of their kind in the world. Provincial and territorial governments

UNIFORM LAW CONFERENCE OF CANADA

have invested very large amounts of resources over several years to develop these systems. It is very unlikely that any jurisdiction would be prepared to implement a certificate of title system for motor vehicles that would involve recording security interests on titles to motor vehicles. This would involve not only merging two historically and functionally different administrative structures, but in addition, it would entail making the system for registration and searching of security interests and liens much less efficient than it now is.

[24] There is another factor that dictates maintenance of the secured transactions registry systems separate from motor vehicle ownership registration systems. It is not possible to merge the former with the latter and disband the secured transactions registry systems that now exist. These systems provide for the registration of security interests and liens on a wide range of tangible and intangible personal property other than motor vehicles. Consequently, as is the case in the United States, they would have to be retained for this purpose. This would entail duplication and the necessity to provide the appropriate legal and administrative interface between the two systems.

[25] A very significant portion of the income from registration and search facilities provided by the registries is attributed to security interests and liens on motor vehicles owned by users.²⁸ The author has been informed by registrars that approximately 65-75% of registrations in a Canadian secured transactions registry relate to automobiles. If this revenue were lost or transferred to a different government agency, the cost of registrations in and searches of the registry would increase dramatically unless the system were heavily subsidized with revenue from other sources.

[26] Given these circumstances, there are very strong arguments against implementing a certificate of title system for motor vehicles that provides for the disclosure of security interests or liens on titles or in title records. The only feasible approach is to have two separate systems: an ownership registration system and a security interest and lien registration system. Under this approach, a prospective buyer or secured party would obtain two separate searches under separate systems.²⁹ Logistically, it would be possible

SHOULD CANADIAN JURISDICTIONS IMPLEMENT CERTIFICATE OF TITLE SYSTEMS FOR MOTOR VEHICLES?

to have an electronic interface (web page) through which the searches of both systems is facilitated.

V. SOME CONCLUSIONS

[27] History plays an important role in explaining the very significant differences between developments in the United States and in Canada with respect to systems for certificates of title to motor vehicles. The systems that now exist in States of the United States were developed at a time when motor vehicle registration was either not common or was primitive. Automobile theft was facilitated by separate administrative and criminal laws in each of many (48 and later 50) jurisdictions. While the first modern secured transactions systems were implemented in states starting in the late 1950s, very few, if any, states had efficient, sophisticated registry systems for security interests until the mid-1990s. This being the case, certificate of title systems providing reliable records of “ownership” and security interests affecting vehicles offered a ready (if not efficient) solution to two problems: auto theft (proof of ownership) and publication of security interests affecting motor vehicles.

[28] Certificate of title systems are now well-established in the United States and are relied upon by the public. They will not be repealed or substantially changed even though there now exist simpler or better methods of dealing with the problems that induced the creation of these systems. The current interest is in improving certificate of title systems, not replacing them.

[29] The picture is very different in Canada. Motor vehicle registration systems are modern and efficient. There is every reason to expect that in the near future all jurisdictions will offer facilities similar to those now available in several jurisdictions under which a potential buyer or secured creditor can obtain access to motor vehicle registration records that will provide a significant measure of protection against risk associated with the *nemo dat* rule. Car theft is addressed through modern policing

UNIFORM LAW CONFERENCE OF CANADA

methods including a nation-wide car theft data base available to all policing services. Since all jurisdictions in Canada now have very efficient systems for publication of security interests in motor vehicles, there can be no justification for duplicating these systems by adopting much more cumbersome, expensive and no more effective certificate of title systems that apply to security interests.

¹ The text of the 2005 Uniform Certificate of Title Act is set out on the following URL:
www.law.upen.edu/bll/ucota/2005AMAppText.html

² Grant Gilmore, *Security Interest in Personal Property* (Boston: Little Brown & Co, 1965) 552 et seq.

³ See Note, "Security Interests in Motor Vehicles Under the UCC: A New Chassis for Certificate of Title Legislation" (1961), 70 Yale L.J. 995.

⁴ The matter has been examined in Canada in the past. See *Report of the Select Committee of the Ontario Legislature on Central Registration of Documents of Title and Pledge Respecting Chattels and Certificates of Title of Ownership of Motor Vehicles.*, 1955. While there is no official record of the matter, one researcher contends that the recommendations of the Committee that Ontario adopt a US-style certificate of title system were not acted upon because of objections from retail sellers of motor vehicles, mainly because they feared that there would be significant delays in issuing titles to buyers. See Davies, "Wrongful Dispositions of Motor Vehicles in England: A US Certificate of Title Solution?" (1994), 23 Anglo-American Law Review 460 at 476.

⁵ Factors Acts or Sale of Goods Acts in all common law provinces protect buyers of goods who deal with mercantile agents (consignment sellers) who are in possession of goods with the consent of owners of the goods. See, e.g., Factors Act R.S.O. c. F-1, s. 2. In some provinces, a person who buys goods but leaves them in the possession of the seller loses his/her ownership to a good faith buyer from the seller. See e.g., *Sale of Goods Act* R.S.O. 1990 c. S-1, s. 25. In many jurisdictions, the first buyer can protect its ownership by registration in the Personal Property Registry. This is a form of "ownership" registration. See, e.g., *The Sale of Goods Act* R.S.S. 1978, c. S-1, s. 26(1.1).

⁶ See, e.g., *Ontario Highway Traffic Act*, R.S.O. 1980, c. H8, s. 7; R.R.O. 1990, Regulations 628, Amended O. Reg. 637/05, s.2.

SHOULD CANADIAN JURISDICTIONS IMPLEMENT CERTIFICATE OF TITLE SYSTEMS FOR MOTOR VEHICLES?

⁷ *Ibid.*, s. 7(22).

⁸ *Ibid.*, s. 7(13).

⁹ See, e.g., Motor Vehicle Act, R.S.N.B. 1973, c. M-17 – s.1

¹⁰ See *Hayduk et al. v. Pidoborozny et al.* [1972] S.C.R. 879; *Bois v. McDonald*, [1975] 5 W.W.R. 739, 60 D.L.R. (3d) 184 (Alta. C.A.).

¹¹ *Furjes v. Goodman et al.* (1956), 19 W.W.R. 26, 5 D.L.R. (2d) 57 (Alta.); and *Yaeger (Jaeger) v. Heilman*, [1948] 2 W.W.R. 135, affirmed *ibid.* at 958 (Sask. C.A.).

¹² *Ontario Highway Traffic Act*, R.S.O. 1990, c. H8, s. 192.

¹³ See, e.g., *Motor Vehicle Act* R.S.B.C. 1996. c. 318, s. 3.

¹⁴ Section 11.1 of the *Ontario Highway Traffic Act*, R.S.O. 1990, c. H-8, s. 192 requires that every person who sells, offers for sale or transfers a used motor vehicle must provide to the purchaser or transferee a “used vehicle information package” in respect of the vehicle issued by the Ministry of Consumer and Commercial Relations or the Ministry of Transportation. The package consists of a statement of all registrations relating to the vehicle under the *Personal Property Security Act* and the *Repair and Storage Liens Act* and the Ontario registration history of the vehicle. The purchaser or transferee can determine from this information who was the “registered owner” at the various stages of the life of the vehicle (so long as it was licenced in Ontario during this time) according to the records of the Ministry of Transport. While there is no statutory guarantee that any of these “registered owners” were or is the legal owner of the vehicle for purposes other than the highway traffic legislation, this type of system can be very helpful in giving a large measure of comfort to a potential buyer of a motor vehicle that was originally purchased new from a retail seller in Ontario.

In Alberta a person interested in purchasing a registered motor vehicle may request a Vehicle Identification Report from the Motor Vehicle Registry. The report contains (i) - the year, make model style, color and fuel type; (ii) the vehicle status, and if applicable, the date that the vehicle was written-off; (iii) registration information relating to the seven most recent registrations in Alberta based on information available since December 1993; (iii) the municipality where the registrants resided; (iv) the latest licence place classification; (v) and the number of security interest and liens registered in the personal property registry using the serial number of the vehicle.

In Quebec a person interested in buying or leasing a motor vehicle can obtain a record of the vehicle from the Société de l'assurance automobile du Québec. The report contains: (i) descriptive data about the vehicle

(brand, model, year, number of cylinders, net weight, etc.) and whether it has been rebuilt or has been in a serious accident; (iii) a record of previous owners (but does not include the identity of the individual owners) and (iv) the previous use of the vehicle (commercial or personal).

¹⁵ Saskatchewan, Northwest Territories, Prince Edward Island and Manitoba.

¹⁶ Newfoundland and Labrador, Nova Scotia, British Columbia and Yukon. The author has been informed that the government of New Brunswick will soon provide a facility through which a person, using the serial number or licence plate number, can obtain information from the motor vehicle registry as to the colour, year, make and model of the car and whether the vehicle has been written-off by an insurer or has been reported as a stolen vehicle. A search will also include information on interests registered in the Personal Property Registry. However, it will not reveal the current or former owners of the vehicle.

¹⁷ See generally, Cuming, Walsh and Wood, *Personal Property Security Law* (Toronto: Irwin Law, 2005), esp. Chapter 6. Exceptions to this generalization are registrations effected pursuant to section 427 of the *Bank Act*. *Bank Act* security interest affecting motor vehicles do not include a description of the collateral. This is not a serious problem. As a result of the restrictions contained in the Act with respect to the types of collateral that can be taken as security, *Bank Act* security interests in motor vehicles are rare. See Cuming, etc. pp. 585-589.

¹⁸ Since all systems are computerized and most of them are accessible through the internet, an electronic search result can often be obtained in a matter of a few minutes.

¹⁹ Searches of motor vehicle registry information under Ontario, Alberta (*supra*, note 13) and Manitoba systems disclose registrations in the secured transactions registries relating to the vehicle.

²⁰ In some provinces, a search of the Personal Property Registry discloses liens (e.g., repairers' liens) and judgment enforcement measures (writs of execution or enforcement) to which a subsequent buyer's or secured party's interest would be subject. See, Cuming, Walsh and Wood, *supra*, note 17, Chapter 10.

²¹ A problem that arises only in the context of the Ontario Personal Property Security Act results from the ability to effect a registration at a branch office. Since a search result discloses only registrations entered into the central data base of the system, there is a lag time between the date the registration is effected at the branch and the time when that registration is disclosed on a search result. Consequently, a potential buyer may obtain a search result that does not disclose a registered security interest in the vehicle. To deal with this problem, the search result indicates a "file currency date". This is indication to a person who obtains a search result that the result discloses only registrations effected up to the stated date. The potential buyer must be aware that, if he/she purchases the vehicle, it may be subject to an existing, but

SHOULD CANADIAN JURISDICTIONS IMPLEMENT CERTIFICATE OF TITLE SYSTEMS FOR MOTOR VEHICLES?

undisclosed security interest registered after the currency date. However, generally, there is a very short time between the date of a registry search and the file currency date on the search result.

²² The 2005 NCCUSL Uniform Certificate of Title Act, s. 3(34) defines a “vehicle” as “goods that are any type of motorized, wheeled device of a type in, upon or by which an individual or property is customarily transported on a road or highway, or commercial, recreational, travel or other trailer customarily transported on a road or highway.” The definition excludes “an item of specialized mobile equipment not designed for transportation of individuals or property on a road or highway, an implement of husbandry or a wheelchair or similar device designed for use by an individual having a physical impairment or a manufactured home.”

²³ There can be only one title to a vehicle.

²⁴ See, generally, Harrell, “The 2004 NCCUSL Annual Meeting Draft of the Proposed Uniform Certificate of Title Law”, (2005), 37 #3 Uniform Commercial Code Law Journal 83.

²⁵ See Uniform Certificate of Title Act, ss. 24-28.

²⁶ *Ibid.*, s. 4.

²⁷ *Ibid.*, s. 19

²⁸ A certificate of title system cannot apply to security interest in inventories of motor vehicles since, under modern secured transactions law, a security agreement can provide for a security interest in future-acquired property and a registration relating to that security interest can be effected before the inventory is acquired by the debtor. At the time of the registration there may be no motor vehicles owned by the debtor and, consequently, no titles can exist.

²⁹ The so-called “incomplete title” certificate systems that until recently were in use in some States of the United States provided for issue of certificates of title to ownership and registration of security interests in chattel security registry systems. The problem with this approach was that the chattel security systems were primitive and, in some respects, ineffective. See, Harrell, “The 2004 NCCUSL Annual Meeting Draft of the Proposed Uniform Certificate of Title Law”, *supra*, note 24, at 997-998.