Information Note
Department of Digital Government and Service NL

Title: Occupational Health and Safety (OHS) Harmonization

Issue: To provide information to the Honourable Bernard Davis on OHS harmonization activities in advance of the upcoming Federal-Provincial-Territorial (FPT) Ministers Responsible for Labour meeting in Vancouver on April 5, 2024.

Background and Current Status:

- On September 9, 2016, the Federal, Provincial and Territorial Ministers of Labour expressed a desire to see harmonization of occupational health and safety requirements throughout Canada to reduce and/or eliminate, to the greatest extent possible, trade barriers within Canada.

- Under the direction of the Canadian Association of Administrators for Labour Legislation (CAALL) and the CAALL-OHS Committee, and in consultation with the Regulatory Reconciliation and Cooperation Table (RCT), considerable advancements in the harmonization of occupational health and safety requirements have been achieved through the development of several agreements.

- In January 2019, the first harmonization agreement (the National Occupational Health and Safety Reconciliation Agreement) was signed. This provided for the reconciliation of common standards for first aid kits and personal protective equipment items such as footwear, hardhats, and hearing protection. This agreement was renewed for another 5-year term in December 2023.

- The Pan Canadian Occupational Health and Safety Reconciliation Agreement was signed in May 2022. This agreement identified common occupational health and safety standards as they relate to occupational exposure limits and personal protection equipment items such as fall arrestors and vertical lifelines. This agreement was amended in July 2023 to also include first aid safety training.

- Harmonization commitments related to fall protection equipment, first aid kits and first aid training have been fulfilled.

- While not specifically addressed in the harmonization agreements referenced above, on March 1, 2024, new requirements for occupational health and safety committees and programs came into effect. Upon recommendation of the Newfoundland and Labrador Employer's Council, supported by the Newfoundland and Labrador Federation of Labour and OHS Advisory Council, the threshold for determining OHS committee and program requirements increased from 10 or more to 20 or more workers at a worksite. This change harmonizes similar requirements with other jurisdictions throughout the country with the exception of Saskatchewan.

Analysis:

- Requirements to fulfill commitments in these harmonization agreements are normally achieved through regulatory change, administrative policy change or, in some instances, no change at all.

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- Fulfilling the harmonization commitments related to first aid kits required amendments to the provincial regulations. Specifically, a new Canadian Safety Association (CSA) standard (Z1220) is now referenced in the **Occupational Health and Safety First Aid Regulations.** These amended regulations came into force January 1, 2021.

- WorkplaceNL is responsible for the development of "standards for certification of persons required to be certified under the **Occupational Health and Safety Act** and approve training programs, training providers and trainers for certification". This includes first aid training certification. WorkplaceNL has updated the first aid training certification to reflect the CSA standard, and therefore aligned Newfoundland and Labrador with other signatory jurisdictions.

- To fulfill harmonization commitments related to fall protection equipment, new CSA standards were adopted and the provincial **Occupational Health and Safety Regulations, 2012** were amended accordingly and came into force on July 28, 2022. Specifically, the Z259.2.1 standard was replaced with the new standards for fall arrestors (Z259.2.4) and vertical lifelines (Z259.2.5). Amendments were also required to reflect new standards for self-retracting devices (Z2592.2) and connecting components for personal fall arrest systems (Z259.12).

- There were no amendments required to Newfoundland and Labrador's Occupational Health and Safety legislation for personal protective equipment items such as footwear, hardhats, and hearing protection, as the appropriate standards were already in place.

- Canada is considering ratifying International Labour Organization (ILO) Convention C155 (Occupational Safety and Health Convention, 1981). In June 2022, the ILO declared it to be a fundamental convention. At the Ministers' meeting, an update on the technical review project to assess Canada's current compliance with C155 is expected to be provided, followed by a brief discussion of possible next steps.

- In the 1937 Labour Conventions case, the Judicial Committee of the Privy Council held that the federal government cannot use the need to comply with international treaties as justification for encroaching on areas of provincial jurisdiction, such as labour. Whenever a treaty concerns an area of provincial jurisdiction, the relevant provisions may be implemented only by the provincial legislative assemblies. Provincial concurrence would thus be required before Canada could ratify C155.

- [redacted] 29(1)(a)

Action Being Taken:

- Newfoundland and Labrador will continue to be an active participant in the CAALL-OHS Committee and work towards fulfilling its commitments under the National Occupational Health and Safety Reconciliation Agreement.

- Newfoundland and Labrador will continue efforts towards removing trade barriers in the area of occupational health and safety requirements, as outlined in the Pan Canadian Occupational Health and Safety Reconciliation Agreement.

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- [redacted] 34(1)(a)
- [redacted] 29(1)(a)
- The CSA has previously presented to CAALL-OHS their findings on Body Type Appropriate Safety Equipment. Ill-fitting personal protective equipment presents a hazard to workers and Newfoundland and Labrador is supportive of working with other jurisdictions to explore potential opportunities for harmonization.
- [redacted] 29(1)(a)

Prepared/Approved by: D. Legge/K.G. Boland/S. Dutton

Ministerial Approval: Sarah Stoodley

March 27, 2024

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Meeting Note
Department of Digital Government and Service NL
Canadian Finance and Leasing Association
26 March 2024, 3:00 pm
Executive Boardroom, West Block, St. John's

Attendees:
Michael Rothe, Canadian Finance and Leasing Association (CFLA)
Marian Templeton, Automobile Dealers Association of Newfoundland and Labrador
Honourable Sarah Stoodley, Minister of Digital Government and Service NL (DGSNL); Kara Connors, Executive Assistant; Sean Dutton, DM; Scott Jones, ADM

Purpose of Meeting:
- CFLA has requested a meeting to lobby for changes to the **Personal Property and Security Act** (PPSA).

Background:
- The CFLA is a trade association representing Canada's asset-based financing, vehicle and equipment leasing industry. They state that they have over 200 corporate members ranging from large multinationals to national and smaller regional domestic companies.

Personal Property and Security Act:
- The PPSA provides for the Personal Property Registry, a remotely accessible electronic registry that allows both individuals and businesses to record their financial interest in personal property such as cars, boats, and appliances. A security interest electronically filed in the Registry provides evidence of a lender's interest in the collateral described therein.

- The PPSA and the associated Personal Property Security Regulations provide the precise manner in which the name of the debtor must be entered in a registration or searched. Registrations are made by the secured party or their agent. A search may be conducted by debtor name or serial number.

- Where a proper search of the debtor name does not return the registration of the security interest in a serial numbered good due to a registration entry error, the registration of the security interest may be deemed invalid if the error was seriously misleading. This includes situations where a search by the serial number would have identified the security interest held by the secured party.

- The Atlantic provinces has closely aligned their PPSAs and their registries share a common database through Atlantic Canada Online. The three Territories also participate.

- On 6 March 2024, the CFLA, along with the Automobile Dealers Association of Newfoundland and Labrador and the Canadian Automobile Dealer's Association, sent a letter to the Premier's Office requesting changes to the **Personal Property and Security Act** (see Annex A). The letter argues that: "Under the Newfoundland & Labrador PPSA, a secured creditor with a valid PPSA registration against the correct vehicle VIN can be defeated by a trustee in bankruptcy or unsecured creditor of the debtor if there is any error, however minor, in the debtor's name as entered in the PPSA database."

- CFLA recommends that the Province amend the PPSA so that security interests in serial number goods, including motor vehicles, would be confirmed where a registration accurately discloses the subject serial number or VIN despite a debtor name error. This is the model currently in place in Ontario.

Analysis

- [redacted] 34(1)(a)
- [redacted]
- CFLA raised this issue to the Council of Atlantic Premiers in a 13 January 2023 letter. The letter was forwarded to the provinces for individual response.
  - The response from Newfoundland and Labrador, on 7 March 2023, stated that the PPSA was in line with other Canadian jurisdictions and with the guidance from CCPPSL.
  - [redacted] 34(1)(a)
- CFLA's 2024 letter cites a court case in Newfoundland and Labrador (2011 NLTD 134) as evidence that "an error in any mandatory information, such as a name, results in the conditional sale vendor or lessor being unsecured and the vehicle awarded to a third party under the PPSA priority rules".

- [redacted] 30(1)(b)
- [redacted] 34(1)(a)

<u>Potential Speaking Points</u>

- Newfoundland and Labrador's legislation is similar to that of most other jurisdictions in Canada as it recognizes the importance of accurate debtor name information.

- [redacted] 34(1)(a)

[redacted] 34(1)(a)

- We will continue to monitor changes to personal property securities legislation in other jurisdictions and continue to engage with experts to ensure the province's legislation appropriately regulates matters related to personal property security.

Proposed Actions
- None

Prepared/Approved by: P. Lévêque/T. Duggan/S. Jones/S. Dutton
March 26, 2024

Annex A: Joint Letter regarding Personal Property and Security Act

The Honourable Andrew Furey, MHA
Premier of Newfoundland & Labrador
CC: The Honourable Siobhán Coady, MHA
Deputy Premier, Minister of Finance

March 6th, 2024

The Newfoundland & Labrador *Personal Property Security Act*
Secured creditors loss of rights

We write to you as representatives of concerned automobile dealers and the vehicle finance & leasing industry regarding the *Personal Property Security Act* (PPSA) and the immense financial burden it places on small businesses across the province of Newfoundland & Labrador through a flawed system of registration for financing contracts and automobile leases.

The statutes across Canada require registration of a conditional sale contract or lease for a term of more than one year under the PPSA to make the security interest in the motor vehicle collateral enforceable against third party creditors or bankruptcy trustees of the debtor.

Under the Newfoundland & Labrador PPSA, a secured creditor with a valid PPSA registration against the correct vehicle VIN can be defeated by a trustee in bankruptcy or unsecured creditor of the debtor if there is any error, however minor, in the debtor's name as entered in the PPSA database.

The practical effect is that a trustee in bankruptcy or another unsecured creditor of the debtor can seize and dispose of the vehicle, and the PPSA registered lender or lessor gets nothing. In these cases, the PPSA priority rules apply without regard to who owns the vehicle, and at a significant cost to the lender.

The confidence of a lender in the security of its financed asset, which serves as the sole collateral for the customer's commitment to regular payments, is paramount to the lender's capacity to extend credit to consumers and businesses within the province at an affordable rate. This certainty enables the lender to offer accessible credit options, fostering economic growth and stability by facilitating financial transactions and investments for individuals and enterprises alike.

In short, the current system is unjust and unfair.

For example, naming the debtor as "John Smith" or "John M. Smith" instead of "Johnathan Michael Smith" will be offside of Newfoundland & Labrador's PPSA requirements and the secured party will be unsecured. The PPSA makes the registration void if there is an error in naming the debtor despite the serial number or VIN being inputted correctly.

The PPSA statutes in the four Atlantic provinces share this problem and use one computer database among them.

The Courts in Newfoundland & Labrador (2011 NLTD 134) have held that an error in any mandatory information, such as a name, results in the conditional sale vendor or lessor being unsecured and the vehicle awarded to a third party under the PPSA priority rules. This is because a searcher of the PPSA data base by the correct debtor's name would not find the registration due to the name error.

By contrast, the Ontario and BC Courts have held that where there is an error in the debtor's name but the correct VIN is in the registration for a vehicle used as "consumer goods" (or as "equipment" in Ontario), then the secured party is still a secured creditor because a reasonable searcher would search both the debtor's name and the VIN and would find the secured party's claim.

The reality is that most parties search only the VIN to find information about the vehicle's entire history, regardless of one or more owners, for such matters as CARFAX reports, government Used Vehicle Information Packages used by buyers of vehicles from a vendor who is not a licenced dealer, stolen Vehicles, insurance records, in addition to repair and storage lien filings by small business operators.

Presumably, the goal of a public registry is to permit the public to find the information for which they are affecting a search. However, most consumers and small business parties will not understand the PPSA rules on how to name people to search correctly and will not be able to obtain the correct document to name the individual under the Newfoundland & Labrador waterfall of documents.

Consumers and small businesses engaged in buying used vehicles, repairing vehicles, or dealing with insurance claims from vehicle accidents, already have the capacity to accurately collect the VIN from the vehicle itself, or the vehicle registration documents.

Every vehicle has a VIN. It is reasonable to expect that those who conduct a PPSA search to determine the ownership and/or creditor rights registered against a vehicle can use the VIN to carry out the search, whether the name of the debtor is exactly accurate.

Therefore, our recommendation is that where the VIN is accurately entered in the PPSA registration, that should be sufficient to protect a lender's or lessor's right and to protect those rights to the vehicle that was properly described. A search by VIN is simple and straightforward, and this change we propose does not affect a consumer's rights in any way. What it does is modernize the Act and ensure the banks, lessors and small businesses that their financing is secure.

We recommend Newfoundland & Labrador consider adopting a PPSA provision that confirms as perfected security interest in serial number goods, including motor vehicles, where a registration accurately discloses the subject serial number or VIN despite any debtor name error. The rest of the collateral may be unperfected, but at least the vehicle collateral will be perfected.

Finally, we understand that Newfoundland & Labrador shares a common PPSA database with the other Atlantic provinces. What we are proposing requires no change in the computer system – it is fine as it is, and no system modifications are needed. Indeed today, VINs are already entered in that system. All that is required by our proposal is a change in provincial legislation to confirm that the security interest in the vehicle financed is valid and effective where a PPSA registration accurately discloses the VIN, regardless of whether the debtor-customer's name is complete and correct.

If you or any of your colleagues have any questions, please do not hesitate to ask.

Sincerely,

Marian Templeton
Executive Director
Automobile Dealers Association of Newfound & Labrador

Tim Reuss
President & CEO
Canadian Automobile Dealer's Association

Michael Rothe
President & CEO
Canadian Finance & Leasing Association