

Ontario Amends PPSA to Avoid Vexatious Registrations

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On December 8, 2020, a new Part V.1 was added to *the Personal Property Security Act (Ontario)* (the PPSA) to safeguard against vexatious registrations.¹ The amendments give the registrar the power to discharge a vexatious registration or to reject a document if the result would be a vexatious registration. The amendments reduce the economic burden on debtors and secured parties as they allow a vexatious registration to be discharged without going to court. While this amendment may protect debtors from being harassed by secured parties, it also may protect secured parties from having to assume the risk of funding into a scenario where there is an old or erroneous PPSA registration against their debtor that amounts to a vexatious registration and that has yet to be correctly discharged by the prior secured party.

What is a Vexatious Registration

A “vexatious registration” is defined as the registration of a document that (a) the registrar considers to have been tendered for the purpose of annoying or harassing the person named as the debtor in the document or for any other improper purpose and (b) that has been tendered by or on behalf of a person who does not hold the security interest referred to in the document, or is claiming an interest that is not registrable under the PPSA.

Under the amendments, “document” refers to a financing statement, a financing change statement, a claim for lien, a change statement or any other document being tendered for registration in the registration system.

Impact: Reject and Discharge

The amendments give the registrar the power to reject a document that, if registered would result in a vexatious registration. The rejection of a document may be appealed to the Divisional Court by any person who is named as a secured party on the document.

The registrar is also given the power to discharge a vexatious registration on his or her own initiative or in response to a written request from a person affected by the registration. A decision that considers whether to discharge the registration may also be appealed to the Divisional Court by certain persons as specified.

The new changes apply to every document tendered for registration and every registration in the registration

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system before or after the amendments take effect.

¹ Bill 213, *Better for People, Smarter for Business Act, 2020*, 1st Sess, 42nd Leg, Ontario, Schedule 19.

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