

July 27, 2017

## THE LONG AWAITED REPEAL OF ONTARIO'S *BULK SALES ACT*

On March 22, 2017, the *Burden Reduction Act* (the "Act") received Royal Assent in the Ontario legislature. The Act is part of the Ontario government's initiative to reduce the regulatory requirements that cost businesses time and money. It repealed the *Bulk Sales Act* ("BSA"), which had been in effect in Ontario for nearly a century.

Ontario was the last province in Canada to repeal its bulk sales legislation!

### What was the BSA?

The BSA was enacted in Ontario in 1917 to prevent vendors from liquidating most or all of their assets in an effort to avoid paying trade creditors. The BSA applied to any sale of all (or substantially all) of the assets of a business. Since its enactment, the BSA loomed over parties involved in asset sale transactions. Unless compliance with the BSA had been expressly waived, there was an elaborate process to be followed.

### The BSA Process

For those transactions subject to the BSA, compliance with it required the purchaser to:

- 1) obtain a list of the vendor's trade creditors, verified by an affidavit sworn by the vendor;
- 2) ensure that all debts owing to trade creditors disclosed by the vendor were paid in full or

provision was made for their payment (or, with the consent of the creditor, that money had been paid to a trustee on account thereof); and

- 3) within five days of completing the transaction, swear and file an affidavit confirming compliance with the BSA with the Court(s) located in the counties or districts in which all or part of the property being sold was located.

Failure to comply with the requirements could result in a transaction being declared void or, worse, the purchaser being held liable for the vendor's outstanding debts.

In effect, the BSA placed the burden on the purchaser of a business for ensuring that the vendor's creditors were paid.

### Remedies Available to Trade Creditors Now

The BSA was considered archaic, burdensome and costly, particularly in light of other more pragmatic procedures available to protect creditors. Other tools available to creditors to protect their rights on a bulk sale include:

- 1) at the provincial level, trade creditors may: register security interests under the *Personal Property Security Act* in the goods supplied to a debtor; set aside transactions intended to defeat,

delay or defraud creditors under the *Fraudulent Conveyances Act*; and obtain remedies to recover unpaid debts under the *Business Corporations Act* (Ontario) (in the case of an Ontario corporation); and

- 2) at the federal level, trade creditors may have transfers voided under the *Bankruptcy and Insolvency Act* if the transfer was made for no or conspicuously low consideration, or obtain remedies to recover unpaid debts under the *Canada Business Corporation Act* (in the case of a federally incorporated corporation).

### What About Landlords?

The repeal of the BSA will have a negligible effect on landlords. They are often a necessary party to the sale (in that the sale of assets is part of the sale of a business which requires an assignment of a lease, typically requiring the consent of the landlord). Landlords also have remedies (for example, distraint) for unpaid rent.

Many standard form leases include non-compliance with the BSA as an event of default. Standard lease forms should be amended to remove references to the BSA.

## ANNOUNCEMENTS

Daoust Vukovich LLP is pleased to welcome to the firm the following associate lawyers:

**PAETRA KAUFMANN** joins us in the area of commercial leasing. Paetra practiced as an in-house counsel for a private real estate developer in New York City for three years. She holds a BA (Hons) from Queen's University and is a graduate of Western New England University School of Law and was admitted to the New York State Bar in 2014. Paetra can be reached at: 416-479-4357 ([pkaufmann@dv-law.com](mailto:pkaufmann@dv-law.com)).

**DINA PEAT** joins our litigation department, having two years of commercial and insurance defence litigation experience. Dina holds a BSc (Hons) from McMaster University and a BA (Hons) from York University. She is a graduate of Queen's University Faculty of Law and was admitted to the Ontario bar in 2015. Dina can be reached at: 416-598-7055 ([dpeat@dv-law.com](mailto:dpeat@dv-law.com)).

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Our secret for closing files lies as much in what is taken out as in what is put in. By eliminating exorbitant expenses and excess time, by shortening the process through practical application of our knowledge, and by efficiently working to implement the best course of action, we keep our clients' needs foremost in our minds. There is beauty in simplicity. We avoid clutter and invest in results.

Often a deal will change complexion in mid-stage. At this critical juncture, you will find us responsive, flexible and able to adjust to the changing situation very quickly and creatively. We turn a problem into an opportunity. That is because we are business minded lawyers who move deals forward.

The energy our lawyers invest in the deal is palpable; it makes our clients' experience of the law invigorating.

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