

AND THEN THERE WERE NONE; ONTARIO HAS REPEALED THE BULK SALES ACT

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Ontario was the last Canadian province to have bulk sales legislation and now it has repealed the *Bulk Sales Act* (Ontario) [\[1\]](#) (the “**BSA**”).

The BSA has existed in Ontario since 1917 and the last substantial amendment to it occurred in 1959. The Act was intended to protect trade creditors from merchants selling all or substantially all of their stock to third parties out of the usual course of business and leaving trade creditors unpaid and without recourse. Bulk sales legislation, including the BSA, required a purchaser of assets (such as goods, merchandise or fixtures that were sold as part of the business or used in the carrying on of business) in a “sale in bulk” (a sale out of the usual course of business) to comply with the BSA, failing which the entire transaction could be set aside.

The BSA was largely viewed as outdated legislation that unnecessarily added transaction costs and uncertainty to asset purchase transactions. In addition to being repealed in all other Canadian provinces, nearly all of the U.S. states have repealed similar legislation.

Practically speaking, parties to an asset transaction most often waived compliance with the BSA and the seller agreed to indemnify the purchaser for any negative effects of such non-compliance. Compliance was impractical in many cases (it included having an affidavit filed in court listing all of the vendors’ secured and unsecured trade creditors and ensuring that arrangements have been made for payment to such creditors), or alternatively, the parties could obtain a court order for exemption of the transaction from the BSA.

A June 15, 2015 report to Ontario’s Minister of Government and Consumer Services by a group of lawyers and legal academics called *Business Law Agenda: Priority Findings & Recommendations Report* noted that other rights and remedies have been developed to protect suppliers’ interests including improved credit investigation through credit reporting agencies, *Personal Property Security Act* (Ontario) security, *Business Corporations Act* (Ontario) oppression remedies and 30 day goods recovery under the *Bankruptcy and Insolvency Act* (Canada).

Bill 27, the *Burden Reduction Act, 2017* received Royal Assent on March 22, 2017 and Schedule 3 which repealed the BSA is now in force. Such changes are welcome as the repeal of the BSA should increase transaction

certainty and reduce transaction costs for asset purchase transactions in Ontario.

[1] R.S.O. 1990, c. B.14.[ps2id id='1' target='']

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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