

Repealing Section 46(3) of the *Ontario Personal Property Security Act*

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On August 1, 2007, the Ontario government repealed section 46(3) of the *Ontario Personal Property Security Act* (the "PPSA") which deals with the registration of financing statements to perfect security interests under the PPSA.

Subsection 46(3) formerly provided that a secured party had the option to provide additional information in the collateral description area of a financing statement (i.e., lines 13 to 15) regarding the collateral of the debtor subject to the registration; however, any description contained in the collateral description area of a financing statement (i.e., lines 13 to 15) could limit the scope of collateral that would be perfected by such financing statement. Accordingly, prior to the repeal of subsection 46(3), if a party searching the registry system discovered a collateral description referring, for example, to only one specific piece of equipment, such a party could rely on the fact that the financing statement would only perfect a security interest in that particular item of equipment and not have to undergo the time and expense of requesting a estoppel letter from the registrant.

With the repeal of subsection 46(3), one can no longer safely assume that additional information provided in the collateral description area of a financing statement will limit the scope of the collateral classifications marked by the secured party. Accordingly, a prospective lender who intends to take a security interest in, or prospective purchaser of, collateral should always send out an estoppel letter to determine the nature and scope of a registrant's security interest in the collateral of a debtor, even if there is a collateral description referring, for example, to only one specific asset.

Some commentators have indicated that the Ontario government's repeal of this section was accidental; however, it does not appear that the government has set a clear timetable to fix this error.