

Perfection by Control of Deposit Accounts and Cash Collateral - Proposal to Amend The Ontario PPSA

February 1, 2012 by [Dale Seymour](#)

A working group of the Personal Property Security Law Sub-Committee of the Ontario Bar Association's Business Law Section has developed a proposal for amendments to the Ontario *Personal Property Security Act* to provide for perfection by control of deposit accounts and other forms of cash collateral. If approved by the Ontario Bar Association, the proposals will be submitted to the Ministry of Consumer Services for consideration. We understand that these proposals, if adopted, would amend the PPSA to create a new class of collateral – the “financial account” - and provide rights for secured parties to perfect a security interest in a financial account through control.

“Financial accounts” would be broadly defined to include deposit accounts and any other monetary obligation of a financial institution in respect of funds it holds or receives as security for an obligation. Consumer accounts would be excluded from the definition of financial account, an approach which is consistent with Article 9 of the UCC.

The proposed amendments would allow a secured party to perfect a security interest in a financial account by 1) registration (this is already provided for under the PPSA and is a departure from Article 9 of the UCC) and 2) control.

The means by which a secured party could obtain control are very similar to those currently in place for securities accounts as a result of the *Securities Transfer Act, 2006* (Ontario). Those methods would include:

1. automatic control if the secured party is also the financial institution that is obligated to the customer under the financial account; and
2. a control agreement entered into by the customer, the secured party and the financial institution maintaining the customer's financial account whereby the financial institution agrees to comply with instructions originated by the secured party in respect of the financial account without further consent from the customer.

A secured party with control of a financial account would have priority over a secured party that does not have control, as well as over a secured party that perfected its interest in the financial account only by registration.

Importantly as well, the PPSA choice of law rules for financial accounts would mirror those in UCC Article 9 for similar collateral, such that the jurisdiction for determining issues of validity, perfection and priority of a security interest in U.S. cross-border deals could be easily established.