

April 25, 1996

BULLETIN TO: ALL PERSONS APPOINTED UNDER THE *BAILIFFS ACT*

FROM: MICHAEL PEPPER, REGISTRAR, COLLECTION AGENCIES ACT

RE: INFORMATION BULLETIN - UPDATE #3

1. *Consents*

- i) If any bailiff, either business or individual, wishes to perform repossessions, seizures or evictions outside of the appointed jurisdiction, s/he **MUST** first be granted the consent of a judge of the Ontario Court(General Division). **Copies of the consent MUST be filed with this office as well as with the sheriffs of the appointed and outside jurisdictions.**
- ii) When working in an area outside your appointed jurisdiction, it appears that many "jobs" have been undertaken by bailiffs without consent for the particular area. If a consent has not been granted by a judge, as required in Section 4 of the Act, this would make the seizure/repossession illegal.
- iii) Section 5 of the *Bailiffs Act* requires that if a bailiff performs a seizure, repossession or eviction outside the county of appointment, and in which a Section 4 consent was granted, the costs for travelling or accommodation cannot be charged **unless the costs are assessed under the *Costs of Distress Act* and the local registrar of the Ontario Court(General Division) is satisfied that it was not practical for the seizure, repossession or eviction to be made by a bailiff appointed for the county in which the seizure, repossession or eviction was made.**

Registrar's Position

If you perform a seizure, repossession or eviction in any county/jurisdiction for which a valid and current Section 4 consent was granted to you/your employer, you cannot charge as recoverable costs the costs for travelling or accommodation unless authorized by the local registrar of the Ontario Court(General Division).

2. *Municipal Act and Costs of Distress Act*

The Municipal Act Section 400 states that if taxes are a lien on land, or not a lien on land, the collector of the taxes may "levy them with costs by distress".

The Municipal Act Sect. 384.(1) states:

“Where taxes are due upon any land occupied by a tenant, the collector or, after the roll has been returned, the treasurer, may give the tenant notice in writing requiring the tenant to pay such collector or treasurer the rent of the premises as it becomes due from time to time to the amount of the taxes due and unpaid and costs, and the collector or treasurer has the same authority as the landlord of the premises would have to collect the rent by distress or otherwise to the amount of the unpaid taxes and costs.

The Costs of Distress Act states that:

- Section (1) *“No person making distress for rent or for a penalty and no person employed in making the distress, or doing any act in the course of the distress, or for carrying the distress into effect, shall levy, take or receive any costs in respect of the distress other than those prescribed by the Lieutenant Governor in Council. R.S.O. 1980, C.98, S.1”.*
- Section (3) *“No costs shall be levied, taken or received for or in respect of exempted goods when they may not be lawfully sold, and, when sold, no greater sum in all than \$2 and actual and necessary payments for possession money shall be levied, taken or received for or in respect of costs and expenses of sale of such exempted goods. R.S.O. 1980, c. 98, s. 3.*

Section 4 of the Costs of Distress Act and Section 400 (9) of the Municipal Act state:

No person shall make any charge for anything unless it is actually done.

Further, the Act requires that goods and chattels that are distrained are assessed and further, that a commission on sale of 10% of the proceeds of sale may be applied.

Registrar's position

If no sale takes place, the bailiff is not authorized to apply a 10% “proceeds of sale” charge. The only charges applicable would be those defined in regulation 1. 1-10 under The Costs of Distress Act.

3. *Assistant Bailiffs - Termination of Employment / Change of Employer*

Upon written notification by you informing this office of the proposed change, the Registrar will provide you with a letter authorizing the change. It is imperative that this be done before you make the change as otherwise your file is not accurate and may place your appointment in jeopardy.

4. *Bonds*

This office has noted during the past two years that many bailiffs pay little attention to the fact that surety bonds must be current at all times if appointments are to be kept current and in good order.

When your insurer notifies you of pending bond cancellation, you are obliged to either renew your existing bond or obtain a replacement. If this office does not receive either proof of renewal or a replacement bond, your appointment will be terminated and you will be ineligible to carry on business as a bailiff in Ontario. **THERE ARE NO EXCEPTIONS.**

5. ***Bailiff at the Scene***

You are once again reminded that when engaging the services of a tow truck operator, an appointed bailiff must be present during the repossession, seizure, or eviction. Otherwise, the business is placing its appointment in jeopardy.

6. ***Change of Business / Service / Residence Address***

This office is striving to maintain accurate records for all appointed bailiffs. We therefore need your cooperation in advising this office before you make changes in your business and/or home location and to forward this information to this office immediately.

You are reminded that a business premises **does not include a dwelling** and a dwelling means any premises or any part thereof occupied as living accommodation.

7. ***Books of account and financial statements***

Sections 13(3) & (4) of the *Bailiffs Act* requires that every bailiff shall keep and maintain books of account in accordance with accepted principals of double-entry bookkeeping and every bailiff shall furnish the Registrar with a financial statement in such form and at such times as the Registrar requires.

I am hereby requiring that each bailiff business furnish this office with a year end financial statement, for the fiscal years ending December 31, 1994 and 1995, and these statements must be received by this office no later than June 30, 1996. Such statements are to be reviewed by a licenced public accountant.

The Registrar will be administering the *Act* accordingly.

8. ***Trust Accounts***

The *Bailiffs Act* requires that every Bailiff shall maintain an account designated as a trust account at a financial institution, in which all money received on behalf of other persons shall be deposited and kept and accounted for separately from any other money.

In order to keep our records current and up to date, please furnish this office, by June 30, 1996, with a letter from your financial institution stating the account number of the trust account, the length of time the account has been active and the address of the branch where the account is located.

The Registrar will be administering the *Act* accordingly.

9. **Repair and Storage Liens Act and Conversions**

Problem

It has come to this office's attention that some bailiffs are performing "what is termed as conversions" to transfer ownership of vehicles, and issuing "Notice of Intention to Sell".

Legislation

Section 17(1) of the Repair and Storage Liens Act states that:

"A Lien claimant who has a right to sell an article may propose, in lieu of selling it, to retain the article in satisfaction of the amount of the lien claimed by giving written notice of the proposal to the persons entitled to notice under subsection 15(2)."

Registrar's Position

It is the registrar's position that a bailiff sending out a Notice of Intention to Sell, when the lien claimant intends to retain the article, are misleading all parties concerned. Proper notices shall be sent stating exactly what is intended, and where the article may be redeemed. When transferring ownerships, and filing your affidavits, Part III of the Act will then be complied with.

Thank you for your co-operation.