

**INFORMATION BULLETIN
NUMBER 1/93
FOR PERSONS APPOINTED
UNDER THE BAILIFFS ACT**

AUGUST, 1993

Use of the Term "Agent" By Bailiffs

PROBLEM

Some appointed bailiffs operate outside the county for which they are appointed or for which they have received judicial consent to act as a bailiff.

These bailiffs have taken the position that they are "agents" acting for the credit grantor or person who has the right to repossess, seize or evict.

Legislation

Section 1 of the Bailiffs Act defines "bailiff" as:

"a person who acts, assists any person to act or holds himself or herself out as being available to act for or on behalf of any other person in the repossession or seizure of chattels or in any eviction."

Section 4 of the Bailiffs Act states:

"a bailiff may act as a bailiff in a county other than the county for which he or she is appointed if the consent of a Judge of the Ontario Court (General Division) is first obtained."

Registrar's Position

The Registrar's position is that persons who hold themselves out as being available to act for or on behalf of any other person in the repossession or seizure of chattels or in any eviction are not "agents" and are, in fact, acting as bailiffs and must be appointed under the Bailiffs Act. Bailiffs acting in jurisdictions other than that for which they are appointed must do so under judicial consent issued by a Judge.

The Registrar will be administering the Act accordingly.

August, 1993

Use of the term "Agent " by Tow Truck Operators

Problem

Some tow truck operators and others take the position that they are "agents" acting for the credit grantor or person who has the right to repossess and accordingly believe they do not require appointment as a bailiff under the Bailiffs Act.

Legislation

Section 1 of the Bailiffs Act defines "bailiff" as:

"a person who acts, assists any person to act or holds himself or herself out as being available to act for or on behalf of any other person in the repossession or seizure of chattels or in any eviction."

Section 3.-(1) of the Bailiffs Act sets out that:

"No person other than a person authorized to act as a bailiff under court process, shall act as a bailiff unless appointed by the Lieutenant Governor on the recommendation of the Minister."

Registrar's Position

The Registrar's position is that persons who hold themselves out as being available to act for or on behalf of any other person in the repossession or seizure of chattels or in any eviction are, in fact, acting as bailiffs and must be appointed under the Bailiffs Act.

A tow truck operator who works under the supervision of a bailiff or assistant bailiff who is personally present at the time of the seizure does not require appointment under the Bailiffs Act.

The Registrar will be administering the Act accordingly.

August, 1993

Use of "lien warrants" etc.

Problem

Some bailiffs are using documents that resemble court documents to indicate to the consumer an "authority" to seize.

Legislation

Section 1 of the Debt Collectors Act:

"....Prohibits any person, whether principal or agent, from printing or publishing a notice or form that is an imitation or a colourable imitation of any court form, and that is calculated to deceive the public by inducing the belief that such notice or form is a notice or form from a court, or is part of the process of a court. And that issuing or making use of such a notice or form in connection with a collection agency or otherwise is guilty of an offence...."

Registrar's Position

The Registrar's position is that bailiffs or assistant bailiffs who are found to be using documents that appear to be court documents may also be the subject of administrative action by the Registrar under the Bailiffs Act. Such administrative action could involve a proposal to revoke an appointment under the Bailiffs Act.

August, 1993

Repair and Storage Liens Act
and Bailiffs registered under the Bailiffs Act

Problem

When may bailiffs appointed under the Bailiffs Act repossess articles which are subject to liens registered under the Repair and Storage Liens Act?

Legislation

Section 14(1) of the Repair and Storage Liens Act states that:

the sheriff may be used to repossess articles which are subject to liens.

Section 14(3) of the Repair and Storage Liens Act states that:

"nothing in sub-section 1 prevents a lien claimant from exercising any lawful power of seizure...Whether provided for by contract or otherwise available to the lien claimant by law."

Registrar's Position

It is the Registrar's position that a bailiff may only exercise a power of seizure where the lien claimant with a valid lien under the Repair and Storage Liens Act has a clear, contractual right to repossess the articles. If the lien claimant does not have both a valid lien and a contractual right to repossess the articles then only the sheriff may seize or repossess. Recent court cases support the Registrar's position on this issue.

August, 1993

Names and Tradestyles used by appointed Bailiffs

Problem

Some appointed bailiffs are operating their business in a name, tradestyle, corporation or partnership other than the name in which they are appointed under the Bailiffs Act.

Legislation

Section 1 of the Bailiffs Act defines "bailiff as:

"a person who acts, assists any person to act or holds himself or herself out as being available to act for or on behalf of any other person in the repossession or seizure of chattels or in any eviction".

Section 3.-(1) of the Bailiffs Act sets out that:

"No person other than a person, other than a person authorized to act as a bailiff under court process, shall act as a bailiff unless appointed by the Lieutenant Governor on the recommendation of the Minister."

Registrar's Position

Appointments will only be made in names that conform to the appropriate requirements under the Business Corporations Act, Partnerships Act, Limited Partnerships Act or Business Names Act.

Bailiffs appointed under the Bailiffs Act may only operate in the name or tradestyle that appears in their letter of appointment.

It is the responsibility of the appointed bailiff company or individual to ensure that the proper documentation is filed when the application for appointment is sent to the Sheriff.

The Registrar will be administering the Act accordingly.

August, 1993

Bailiff Bond Requirements

Problem

Some bailiffs do not ensure that a replacement bond is filed with the Registrar when their current bond is cancelled by the insurer.

Legislation

Section 14.-(1) Of the Bailiffs Act states that:

"no person shall act as a bailiff unless bonded in the prescribed amount and form"

Regulation 53 under the Bailiffs Act requires in form 1 and 2 that:

"the bond may be cancelled by giving to the Registrar of Collection Agencies at least two months notice in writing of intention to cancel and it shall be deemed to be cancelled on the date stated in the notice, which date shall be not less than two months after receipt of the notice by the Registrar of Collection Agencies".

Registrar's Position

The Registrar will send to the bailiff company, bailiff, or assistant bailiff notice by registered mail that cancellation of the bond has been received and will be effective on a certain date. The notice will also advise the bailiff company, bailiff or assistant bailiff that they will be ineligible to act as a bailiff pursuant to Section 14.-(3) of the Bailiffs Act effective the date of cancellation for the bond unless a replacement bond or a notice of continuance is received. The Sheriff/Court Services Manager in the county for which the bailiff is appointed will also be advised.

August, 1993
