

**Ministry of Public and Business
Service Delivery**

Inspections, Investigations and
Licensing Branch

PO Box 450
Toronto, ON M7A 2J6

Tel.: 416-326-6203
Toll Free: 1 800-889-9768

**Ministère des Services au public et aux
entreprises**

Direction des inspections, des
enquêtes et des permis

PO Box 450
Toronto, ON M7A 2J6

Tél. : 416-326-6203
Sans frais : 1 800 889-9768



September 15, 2022

To: All appointees and registrants under the Bailiffs Act

Registrar's Bulletin – September 2022

Acting Responsibly

The Bailiffs Act requires bailiffs and assistant bailiffs to act responsibly. Complaints revealing failures by bailiffs or assistant bailiffs to act responsibly have resulted in warning letters, suspensions, and the imposition of terms and conditions on registrations.

The Ministry of Public and Business Service Delivery's Registrar of Bailiffs has identified several practices as failures to act responsibly:

1. **Refusing to identify oneself to the debtor or former tenant upon request.** Be sure to identify yourself truthfully and promptly when repossessing or seizing property or carrying out an eviction. Use the appropriate title (i.e., "assistant bailiff" or "bailiff").
2. **Misrepresenting the authority to seize or repossess chattels.** In the absence of a court order, the authority to seize or repossess chattels is an extension of the rights of the lien-holder.
3. **Using force to seize or repossess chattels without the authority to do so.** Generally, if the person in possession of the chattels refuses to surrender the chattels or the seizure or repossession becomes non-peaceful, bailiffs should disengage. The use of force is only permitted in very specific circumstances, such as where there is a judicial writ of seizure issued under the Repair and Storage Liens Act, or where a tenant fraudulently removes goods from the premises to some other place when the bailiff or landlord are exercising a distress remedy.
4. **Withholding personal property of a person who has had their vehicle repossessed.** Agreements and leases may provide for bailiff costs to be passed to the debtor. However, persons who have had their chattels seized or repossessed still have a right to access their personal property. Generally speaking, access to this property must be granted regardless of whether they have paid the permitted

bailiff costs. In cases where there is a storer's lien involved, ensure that there is clear authority for such a lien.

5. **Failing to provide required notice to affected parties.** The various statutes that apply to your duties include notice requirements for certain circumstances. Provide those notices to all appropriate parties.
6. **Arbitrarily or suddenly changing costs charged to debtors or former tenants.** As noted above, in some cases, the costs of bailiff services may be passed along to the debtor or tenant. The Ministry is aware of cases in which these fees suddenly increased for no apparent reason other than the bailiff wishing to quickly conclude discussions with the former tenant. This is not responsible. Ensure that changes to such costs are not arbitrary.

Please ensure that you are acting responsibly in all aspects of your duties.

Use of Titles “Bailiff” and “Assistant Bailiff”

In Ontario, “bailiffs” and “assistant bailiffs” are distinct terms defined by the Bailiffs Act. An assistant bailiff acts under the supervision of a bailiff. Assistant bailiffs must not identify themselves as bailiffs, but rather, as assistant bailiffs. Bailiffs must ensure that their supervision of assistant bailiffs is responsible and diligent. If you are concerned that persons are acting without the proper registration or appointment, you can make a complaint to the Registrar of Bailiffs by emailing CPOlicensing@Ontario.ca.

Dual Roles

If you are engaging in multiple lines of business (e.g., a bailiff business and a storage business), be advised that the application of the Bailiffs Act to your business practices will depend on the nature of the circumstances and conduct in question rather than the name of the business carrying out the work. Your conduct in other lines of business will reflect on your appointment or registration. Anything that falls within the scope of repossession or seizure of chattels or evictions must be carried out by persons registered or appointed under the Bailiffs Act.

Voluntary Surrenders

Accepting a voluntary surrender is a form of repossession and, as such, should be carried out by the person who has the right to the collateral or by a bailiff or assistant bailiff acting on that person's behalf. Also note that a voluntary surrender does not, in and of itself, override the

application of subsection 25(1) of the Consumer Protection Act, (i.e., the “two-thirds” rule), where it applies.

Collection Activity

The Bailiffs Act prohibits persons from acting as a bailiff or an assistant bailiff while an employee of, or engaging in the business of, a collection agency.

Ontario’s Collection and Debt Settlement Services Act (“CDSSA”) sets out requirements for collection agencies. It defines a collection agency as, among other things, “a person, other than a collector, who obtains or arranges for payment of money owing to another person.” Collection agencies must be registered under the CDSSA. The CDSSA prohibits creditors from dealing with the debtor for payment of the debt except under the name to which the debt is lawfully owing or through a registered collection agency. The CDSSA also prohibits persons from knowingly engaging or using the services of a collection agency unless the agency is registered.

Accordingly, bailiffs are not to obtain or arrange for payment of money from a debtor that is owed to a creditor. For example, contacting a debtor whose vehicle may be subject to repossession, or contacting a tenant whose tenancy may be subject to termination, in order to obtain or arrange for payment of money owing to a creditor, is engaging in the business of a collection agency. Any client requesting that you undertake such work must instead retain the services of a registered collection agency. If you do communicate the debt to the debtor or tenant, do not negotiate or in any way attempt to obtain payment in respect of the amount owing other than by presenting that amount.

To maintain your appointment or registration in good standing, please ensure that you respect the distinction between your duties as defined in the Bailiffs Act and those of collection agencies as defined in the CDSSA.

If you have any questions about this bulletin, please contact our office at CPOLicensing@ontario.ca.

Sincerely,



Shane Gallagher

Registrar of Bailiffs