

## Bailiff Bulletin

**To:** All Ontario Bailiffs

**Subject:** Application of the Consumer Protection Act, 2002's "two-thirds" rule to certain auto financing agreements

Ontario has important protections in place for consumers who choose to finance their purchase of a car.

This bulletin is issued to provide bailiffs across Ontario with information about the application of Section 25 (the "two-thirds" rule) of the Consumer Protection Act, 2002 (CPA) to certain auto financing agreements that may currently be in use in Ontario that fall within the definition of "supplier credit agreements" and that are also "future performance agreements" in the CPA.

Section 25 of the CPA may apply if a car financing agreement is entered into between a car dealer and a consumer and then the agreement is assigned to a third-party financier.

The CPA sets out rules regarding when an automobile in respect of which a consumer has paid two-thirds or more of his or her payment obligation in a financing agreement can be seized or resold upon default in payment by the consumer.

A consumer who has paid two-thirds or more of his or her payment obligations in a financing agreement cannot have his or her vehicle seized or resold without the supplier first applying to the Ontario Superior Court of Justice for leave to repossess or resell the vehicle.

Bailiffs are reminded that where a consumer has paid two-thirds or more of his or her payment obligation in a financing agreement, leave must be obtained from the Ontario Superior Court of Justice before a vehicle can be seized or resold on behalf of an auto financing company in Ontario upon default in payment by the consumer.

You are asked to take note of Section 25 (1) of the CPA and Section 11 (1) and (2) of Ontario Regulation 17/05:

### Section 25 (1) – Consumer Protection Act, 2002:

**25. (1)** Where a consumer under a future performance agreement has paid two-thirds or more of his or her payment obligation as fixed by the agreement, any provision in the agreement, or in any security agreement incidental to the agreement, under which the supplier may retake possession of or resell the goods or services upon default in payment by the consumer is not enforceable except by leave obtained from the Superior Court of Justice.

Ontario Regulation 17/05:

**11. (1)** If a credit agreement, other than a supplier credit agreement, is also a future performance agreement, a direct agreement, an internet agreement or a remote agreement, Part IV of the Act does not apply to the agreement.

**(2)** If a supplier credit agreement is also a future performance agreement, a time share agreement, a personal development services agreement, a direct agreement, an internet agreement or a remote agreement,

(a) Part IV of the Act does not apply to the part of the agreement under which the supplier or an associate of the supplier extends fixed credit to the consumer to assist the consumer in obtaining goods or services, other than credit or a loan of money, from the supplier;

(b) Part IV of the Act applies to the part of the agreement under which the supplier supplies the goods or services, other than credit or a loan of money, to the consumer.

Bailiffs are advised that, when acting for a third-party financier who has been assigned such an agreement by a car dealer, you must ensure that any request to seize or re-sell a vehicle is compliant with Section 25 of the CPA before a seizure or re-sale takes place when a consumer defaults in payment.

Please note that the Deputy Director, acting as the Director under the CPA, has issued a policy stating that Section 25 of the CPA applies to consumer agreements under which a car dealer sells a car to a consumer and loans the consumer money to purchase that car, and the car dealer subsequently assigns that agreement to a third-party financier.

It is also the Ministry of Government and Consumer Services' view that Section 25 applies to any consumer agreement that is a supplier credit agreement and also a future performance agreement that is similar in substance to the agreement just described.

For more information, you can review the Deputy Director's policy at <https://www.sse.gov.on.ca/mcs/en/Pages/bulletin101716.aspx>.

Bailiffs should confirm the type of agreement that is in place between the companies involved (e.g., dealer, financier) and the consumer and whether the consumer has paid two-thirds or more of his or her payment obligation as fixed by the agreement.

If a consumer has paid two-thirds or more of his or her payment obligation, then the consumer's car may not be repossessed and/or resold upon default in payment – despite any contractual term to the contrary – without an order of the Superior Court of Justice granting leave to do so. Additional considerations may apply if the consumer is subject to the Bankruptcy and Insolvency Act.

The Registrar may take appropriate action against any bailiff or assistant bailiff who acts in violation of the Deputy Director's policy or this bulletin.

Bailiffs are directed to communicate this bulletin to any assistant bailiffs under their supervision.

Thank you,

Doug Kariam  
Registrar of Bailiffs