

1980

## c 37 Bailiffs Act

Ontario

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### Bibliographic Citation

*Bailiffs Act*, RSO 1980, c 37

### Repository Citation

Ontario (1980) "c 37 Bailiffs Act," *Ontario: Revised Statutes*: Vol. 1980: Iss. 1, Article 39.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1980/iss1/39>

## CHAPTER 37

## Bailiffs Act

## 1. In this Act,

Interpre-  
tation

- (a) "bailiff" means a person who acts, assists any person to act or holds himself 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;
- (b) "business premises" does not include a dwelling;
- (c) "county" includes united counties and a provisional judicial district;
- (d) "county court" includes a district court;
- (e) "dwelling" means any premises or any part thereof occupied as living accommodation;
- (f) "Minister" means the Minister of Consumer and Commercial Relations;
- (g) "Registrar" means the Registrar of Collection Agencies under the *Collection Agencies Act*; R.S.O. 1980, c. 73
- (h) "regulations" means the regulations made under this Act;
- (i) "Treasurer" means the Treasurer of Ontario and Minister of Economics;
- (j) "Tribunal" means The Commercial Registration Appeal Tribunal under the *Ministry of Consumer and Commercial Relations Act*. R.S.O. 1970, c. 38, s. 1; 1971, c. 50, s. 10 (1-3); 1972, c. 1, ss. 23 (5), 25; 1972, c. 3, s. 17 (1). R.S.O. 1980, c. 274

2. This Act does not apply to a person while acting as a <sup>Application</sup> bailiff under a small claims court process or on behalf of a sheriff. R.S.O. 1970, c. 38, s. 2.

Appointment  
R.S.O. 1980,  
c. 706

**3.**—(1) No person, other than a person appointed as a bailiff under the *Small Claims Courts Act* or a sheriff's bailiff, shall act as a bailiff unless he has been appointed by the Lieutenant Governor on the recommendation of the Minister.

Idem

(2) An appointment shall designate the county for which the bailiff is appointed. R.S.O. 1970, c. 38, s. 3.

Consent of  
county judge  
for bailiff  
to act

**4.** A bailiff may act as a bailiff in a county other than the county for which he is appointed if he first obtains the consent of a judge of the county court of the county in which he proposes to act. R.S.O. 1970, c. 38, s. 4.

Costs out-  
side county

**5.**—(1) The costs of a bailiff for travelling or accommodation outside the county for which he is appointed shall not be charged as recoverable costs in a seizure, repossession or eviction unless the costs are taxed under the *Costs of Distress Act* and the clerk of the county court is satisfied that it was not practicable for the seizure, repossession or eviction to be made by a bailiff appointed for the county in which the repossession, seizure or eviction was made.

R.S.O. 1980,  
c. 98

Idem

(2) For the purpose of subsection (1), section 6 of the *Costs of Distress Act* applies to costs in an eviction as if such costs were costs in a seizure or repossession. R.S.O. 1970, c. 38, s. 5.

Application  
for appoint-  
ment

**6.** An application for appointment as a bailiff shall be made to the clerk of the peace in the county in which the applicant intends to carry on business as a bailiff and shall state,

- (a) the name and residence of the applicant ;
- (b) the place where the applicant intends to carry on business ;
- (c) the qualifications of the applicant to act as a bailiff ;
- (d) any circumstance indicating that a bailiff is needed for the public convenience in the place where the applicant intends to carry on business as a bailiff ; and
- (e) whether the applicant has previously acted as a bailiff and, if so, where. R.S.O. 1970, c. 38, s. 6.

Examination

**7.** Upon receiving an application, the clerk of the peace shall examine the applicant and shall forward the results of the examination, together with the security required by

section 14 and his recommendations, to the Registrar. R.S.O. 1970, c. 38, s. 7; 1971, c. 50, s. 10 (4).

8. The Minister may recommend the appointment of the applicant as a bailiff if, Recom-  
mendation  
by Minister

- (a) the applicant has complied with this Act and the regulations;
- (b) the applicant is qualified to act as a bailiff; and
- (c) a bailiff is needed for the public convenience in the county in which the applicant intends to carry on business as a bailiff. R.S.O. 1970, c. 38, s. 8.

9. Subject to section 10, the Registrar may revoke an appointment where the bailiff, Revocation  
of appoint-  
ment

- (a) has not complied with this Act or the regulations or the *Costs of Distress Act*; or R.S.O. 1980,  
c. 98
- (b) is, in the opinion of the Registrar, incompetent or without capacity to act responsibly as a bailiff. 1971, c. 50, s. 10 (5), *part*.

10.—(1) Where the Registrar proposes to revoke an appointment, he shall serve notice of his proposal, together with written reasons therefor, on the bailiff. Notice of  
proposal  
to revoke

(2) A notice under subsection (1) shall inform the bailiff that he is entitled to a hearing by the Tribunal if he mails or delivers, within fifteen days after the notice under subsection (1) is served on him, notice in writing requiring a hearing to the Registrar and the Tribunal, and he may so require such a hearing. Notice  
requiring  
hearing

(3) Where a bailiff does not require a hearing by the Tribunal in accordance with subsection (2), the Registrar may carry out the proposal stated in his notice under subsection (1). Powers of  
Registrar  
where no  
hearing

(4) Where a bailiff requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out his proposal or refrain from carrying out his proposal and to take such action as the Tribunal considers the Registrar ought to take. Powers of  
Tribunal  
where  
hearing

## Parties

(5) The Registrar, the bailiff who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

## Service of notice

(6) The Registrar may serve notice under subsection (1) on a bailiff personally or by registered mail addressed to his address last known to the Registrar and, where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the bailiff on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date. 1971, c. 50, s. 10 (5), *part*.

## Order effective notwithstanding appeal

R.S.O. 1980, c. 274

**11.** Notwithstanding that a bailiff appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately but the Tribunal may grant a stay until disposition of the appeal. 1971, c. 50, s. 10 (5), *part*; 1972, c. 1, s. 23 (5).

## Complaints

**12.**—(1) Any person who has a complaint against a bailiff may make his complaint to the clerk of the peace in the county for which the bailiff is appointed. R.S.O. 1970, c. 38, s. 10 (1).

## Idem

(2) The clerk of the peace shall investigate the complaint and forward the complaint, together with the results of his investigation, to the Registrar. R.S.O. 1970, c. 38, s. 10 (2); 1971, c. 50, s. 10 (6).

## Not to engage in business of collection agency

**13.**—(1) No person shall engage in business as a bailiff while an employee of or engaging in the business of a collection agency. R.S.O. 1970, c. 38, s. 11 (1).

## Change of business address

(2) A person authorized to engage in the business of a bailiff shall notify the Registrar of any change in the address of the place of business. R.S.O. 1970, c. 38, s. 11 (2); 1971, c. 50, s. 10 (7).

## Books of account

(3) Every bailiff shall keep and maintain books of account in accordance with accepted principles of double-entry book-keeping, and shall obtain an audit of his books of account and financial transactions annually by a public accountant licensed under the *Public Accountancy Act*. R.S.O. 1970, c. 38, s. 11 (3).

R.S.O. 1980, c. 405

## Financial statement

(4) Every bailiff shall furnish the Registrar with a financial statement in such form and at such times as the Registrar requires. R.S.O. 1970, c. 38, s. 11 (4); 1971, c. 50, s. 10 (8).

(5) The Registrar may appoint in writing a person to investigate the business of a bailiff as a bailiff and any such person, upon the production of evidence of his appointment under this subsection, may enter between 9 o'clock in the forenoon and 5 o'clock in the afternoon the business premises of the bailiff and examine books, papers, documents and things relating to his business as a bailiff. Investigation

(6) No person shall obstruct a person appointed to make an investigation under subsection (5) or withhold from him or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation. 1971, c. 50, s. 10 (9). Obstruction of Investigator

(7) Every bailiff shall maintain an account designated as a trust account in a chartered bank, the Province of Ontario Savings Office, a credit union, as defined in the *Credit Unions and Caisses Populaires Act* or a registered trust company in which he shall deposit all moneys received by him on behalf of other persons, less any lawful fees or charges, and such moneys shall be kept and accounted for separately from any other moneys. R.S.O. 1970, c. 38, s. 11 (6); 1980, c. 6, s. 2. Trust accounts  
R.S.O. 1980,  
c. 102

(8) Before the fifteenth day of each month, every bailiff shall account to the persons entitled thereto for any moneys received in trust during the previous month and shall pay the moneys, less lawful fees and charges. Accounting for and payment of trust moneys

(9) Within six months after a bailiff receives moneys held under subsection (7), the bailiff shall make every effort to locate the person entitled to the moneys, and shall pay any moneys thereafter remaining unclaimed to the Treasurer who may pay the moneys to any person who satisfies the Treasurer that he is entitled thereto. R.S.O. 1970, c. 38, s. 11 (7, 8). Disposition of unclaimed trust moneys

**14.—**(1) No person shall act as a bailiff unless he is bonded in the prescribed amount and form. Bonding

(2) The bond shall be, Idem

(a) a personal bond accompanied by collateral security;

(b) a bond of a guarantee company approved under the *Guarantee Companies Securities Act*; or R.S.O. 1980,  
c. 192

(c) a bond of a guarantor, other than a guarantee company, accompanied by collateral security.

(3) The collateral security shall be direct or guaranteed securities of the Government of Canada or of the Government of Ontario. R.S.O. 1970, c. 38, s. 12. Collateral security

Forfeiture  
of bond

**15.**—(1) Where an appointment has been revoked under section 9 or 10 and,

R.S.C. 1970,  
c. C-34

(a) the bailiff has been convicted of an offence involving fraud, theft, assault, libel or breaking and entering under the *Criminal Code* (Canada) while acting as a bailiff, or of a conspiracy or an attempt to commit such an offence, and the conviction has become final; or

(b) the bailiff has had a judgment for the recovery of money paid for services not performed or based on a finding of fraud, conversion, assault, libel or trespass committed while acting as a bailiff entered against him, and the judgment has become final,

the Minister may direct that the bond of the bailiff be forfeited. R.S.O. 1970, c. 38, s. 13 (1); 1971, c. 50, s. 10 (10).

Idem

(2) Upon a direction being made under subsection (1), the bond is forfeited and the amount of the bond becomes due and owing as a debt due to the Crown in right of Ontario. R.S.O. 1970, c. 38, s. 13 (2).

Sale of  
collateral  
security

**16.**—(1) Where a bond secured by the deposit of collateral security is forfeited, the Treasurer may sell the collateral security at the current market price.

Payment of  
proceeds

(2) The Treasurer may,

(a) assign any bond forfeited under section 15 and transfer the collateral security, if any;

(b) pay over any money recovered under the bond; and

(c) pay over any money realized from the sale of the collateral security,

to any judgment creditor of the bailiff bonded for claims arising out of the circumstance under which the bond was forfeited, or to the Accountant of the Supreme Court in trust for any person who becomes such judgment creditor.

Idem

(3) Where a bond has been forfeited (or cancelled and the Treasurer has not received notice in writing of any claim against the proceeds of the bond or such part as remains in the hands of the Treasurer within two years of

the forfeiture or cancellation, the Treasurer may pay the proceeds or part remaining to any person who made a payment under the bond. R.S.O. 1970, c. 38, s. 14.

**17.** Every person employed in the administration of this Act, including any person making an examination under section 13, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment or examination and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates. 1971, c. 50, s. 10 (11).

**18.—(1)** Every person who contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

(2) No proceeding under subsection (1) shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director of the Consumer Protection Division of the Ministry of Consumer and Commercial Relations. R.S.O. 1970, c. 38, s. 15.

**19.** The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms and providing for their use;
- (b) prescribing fees for applications;
- (c) prescribing the amount of bonds and collateral security to be furnished under this Act. R.S.O. 1970, c. 38, s. 16; 1971, c. 50, s. 10 (12).



