

1970

c 38 Bailiffs Act

Ontario

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Bibliographic Citation

Bailiffs Act, RSO 1970, c 38

Repository Citation

Ontario (1970) "c 38 Bailiffs Act," *Ontario: Revised Statutes*: Vol. 1970: Iss. 1, Article 41.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1970/iss1/41>

CHAPTER 38

The 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) "county" includes united counties and a provisional judicial district;
- (c) "county court" includes a district court;
- (d) "Director" means the Director of the Registration and Examination Branch of the Department of Financial and Commercial Affairs;
- (e) "Minister" means the Minister of Financial and Commercial Affairs;
- (f) "regulations" means the regulations made under this Act;
- (g) "Treasurer" means the Treasurer of Ontario and Minister of Economics. 1960-61, c. 5, s. 1; 1964, c. 5, s. 1, *amended*.

2. This Act does not apply to a person while acting as a bailiff under a small claims court process or on behalf of a sheriff. 1960-61, c. 5, s. 2. Application

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. Appointment
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c. 439

(2) An appointment shall designate the county for which the bailiff is appointed. 1960-61, c. 5, s. 3. Idem

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. 1961-62, c. 7, s. 1. Consent of
county judge
for bailiff
to act

Costs outside county

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c. 92

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.

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. 1960-61, c. 5, s. 5.

Application for appointment

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. 1960-61, c. 5, 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 12 and his recommendations, to the Director. 1960-61, c. 5, s. 7; 1964, c. 5, s. 2.

Recommendation by Minister

8. The Minister may recommend the appointment of the applicant as a bailiff if,

- (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. 1960-61, c. 5, s. 8.

Revocation of appointment

9.—(1) The Lieutenant Governor, on the recommendation of the Minister, may revoke an appointment where the bailiff,

- (a) has not complied with this Act or the regulations or *The Costs of Distress Act*; or

(b) is incompetent or without capacity. 1960-61, c. 5, s. 9 (1).

(2) No appointment of a bailiff shall be revoked except after a hearing by the Director or person designated by him at which the bailiff shall have an opportunity to be present and make representations, either personally or by counsel, and to examine and cross-examine witnesses.

(3) The Director shall report the results of the hearing and his recommendations to the Minister. 1965, c. 7, s. 1.

10.—(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. 1960-61, c. 5, s. 10 (1).

(2) The clerk of the peace shall investigate the complaint and forward the complaint, together with the results of his investigation, to the Director. 1960-61, c. 5, s. 10 (2); 1964, c. 5, s. 3.

11.—(1) No person shall engage in business as a bailiff while an employee of or engaging in the business of a collection agency.

(2) A person authorized to engage in the business of a bailiff shall notify the Director of any change in the address of the place of business. 1964, c. 5, s. 4.

(3) Every bailiff shall keep and maintain books of account in accordance with accepted principles of double-entry bookkeeping, and shall obtain an audit of his books of account and financial transactions annually by a public accountant licensed under *The Public Accountancy Act*.

(4) Every bailiff shall furnish the Director with a financial statement in such form and at such times as the Director requires.

(5) The Director or such other person as the Director authorizes in writing may, at any time between 9 o'clock in the forenoon and 5 o'clock in the afternoon, enter the premises of a bailiff and examine his books of account and records.

(6) Every bailiff shall maintain an account designated as a trust account in a chartered bank, the Province of Ontario Savings Office 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.

(7) 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.

Disposition
of unclaimed
trust moneys

(8) Within six months after a bailiff receives moneys held under subsection 6, 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. 1966, c. 11, s. 1.

Bonding

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

Idem

(2) The bond shall be,

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c. 196

- (a) a personal bond accompanied by collateral security;
- (b) a bond of a guarantee company approved under *The Guarantee Companies Securities Act*; or
- (c) a bond of a guarantor, other than a guarantee company, accompanied by collateral security.

Collateral
security

(3) The collateral security shall be direct or guaranteed securities of the Government of Canada or of the Government of Ontario. 1960-61, c. 5, s. 11.

Forfeiture
of bond

13.—(1) Where an appointment has been revoked under section 9 and,

1953-54,
c. 51 (Can.)

- (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.

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. 1960-61, c. 5, s. 12.

Sale of
collateral
security

14.—(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. 1960-61, c. 5, s. 13 (1).

Payment of
proceeds

(2) The Treasurer may,

- (a) assign any bond forfeited under section 13 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. 1960-61, c. 5, s. 13 (2); 1961-62, c. 7, s. 2 (1).

(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. 1960-61, c. 5, s. 13 (3); 1961-62, c. 7, s. 2. (2).

15.—(1) Every person who contravenes any provision of this Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000. 1960-61, c. 5, s. 14; 1964, c. 5, s. 5 (1).

(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. 1964, c. 5, s. 5 (2).

16. 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;
 - (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1960-61, c. 5, s. 15.
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