



1970

## c 434 Sheriffs Act

Ontario

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CHAPTER 434

The Sheriffs Act

1.—(1) The Lieutenant Governor in Council may, by a commission under the Great Seal, appoint a sheriff for each county and district, and may appoint such persons to the staff of the sheriff's office as are considered necessary and may fix their position specifications, salary ranges, and terms and conditions of employment.

Appointment of sheriff and staff

(2) The Minister of Justice and Attorney General, or any public servant designated by him in writing for the purpose, may make temporary appointments to the staff of the sheriff's office for a term not exceeding one year. 1965, c. 124, s. 1, amended.

Temporary appointments

2.—(1) The Lieutenant Governor in Council may fix and determine the amount of the security to be furnished on behalf of every sheriff, but such amount shall not in any case be less than \$3,000.

Security

(2) The security shall be furnished in accordance with *The Public Officers Act* and any order in council made under the authority thereof, and within one month after the appointment of the sheriff and before he is sworn into office.

How furnished R.S.O. 1970, c. 382

(3) In case the security is not furnished within such period, or within such further period as the Lieutenant Governor in Council may prescribe, the Lieutenant Governor in Council may revoke the appointment of the sheriff, and his appointment and commission is void from and after the date of the revocation.

Revocation of appointment on failure to furnish

(4) The security is not affected nor is the surety released wholly or in part from the obligation assumed by reason of any change by legislative authority or otherwise in the boundaries of the county or district for which the sheriff was appointed, or by reason of any change in his duties.

Changes in boundaries of bailiwick not to affect security

(5) Any person may examine the security furnished on behalf of a sheriff and is entitled to take a copy thereof.

Right to examine security

(6) Her Majesty, or any person sustaining damage by reason of the default or misconduct of a sheriff, in addition to any right of action against the sheriff, may bring and maintain an action against the surety alone, and the action is not barred by reason of a prior recovery by the same person upon the same security or by reason of a judgment rendered for the defendant in a prior action upon the same security or by reason of any other action being then pending upon the security at the suit of the same plaintiff or any

Action against surety

other person for any other distinct cause of action; except that if the plaintiff has recovered damages in an action against the sheriff for any such default or misconduct and the amount recovered or any part thereof has been paid to the plaintiff, no action lies against the surety for the same cause, except for any amount so recovered and remaining unpaid.

Judgment for balance of amount of security where surety has already been held liable

(7) If upon the trial of an action brought against a surety it appears that the plaintiff is entitled to recover, and that the amount that the surety has paid or has become liable to pay under a judgment recovered against him is not equal to the full amount of the security, the court, after deducting from the full amount the sum that the surety has paid or become liable to pay as aforesaid, shall render judgment against the surety for any sum not exceeding the balance of the sum for which he became surety.

Discharge of surety on payment of full amount

(8) If the surety has actually and *bona fide* paid out of his own money or effects, or has become liable by virtue of a judgment recovered upon the security to pay an amount equal to the amount specified therein the security shall be deemed to be discharged and satisfied, and no other or further sum shall be recovered thereunder.

Staying of further proceedings against surety

(9) The court in which an action on the security is pending, upon proof of such payment or liability, and at any stage of the action, may in a summary manner prevent the recovery against the surety of any further sum than that specified in the security.

Security to extend to acts, or omissions of deputy or sheriff *pro tem*

(10) The security extends to the acts and omissions of the deputy of the sheriff, and, in case of a vacancy in the office of sheriff by death, resignation or otherwise, the security continues and is enforceable with respect to any act or omission of the deputy sheriff or of a sheriff *pro tempore* acting in pursuance of this Act or of any deputy sheriff appointed by such sheriff *pro tempore*, in pursuance of this Act. R.S.O. 1960, c. 371, s. 2.

Sheriff, etc., not to trade

**3.** A sheriff or deputy shall not, directly or indirectly, keep a shop, or trade or traffic in goods, wares, or merchandise, either by wholesale or retail. R.S.O. 1960, c. 371, s. 3.

Sheriff, etc., not to purchase at sales under execution

**4.** A sheriff, deputy sheriff, coroner, elisor, bailiff or constable shall not, directly or indirectly, purchase any goods or chattels, lands or tenements by him exposed to sale under legal process. R.S.O. 1960, c. 371, s. 4.

Misconduct of coroner, elisor, bailiff or constable

**5.** Every coroner, elisor, bailiff or constable entrusted with the execution of any writ, warrant or process who wilfully misconducts himself in the execution of the same, or wilfully makes any false return to such writ, warrant or process, unless by the consent of the party in whose favour the same may have issued, is guilty of

an offence and on summary conviction is liable to a fine of not more than \$200 and to imprisonment for a term of not more than six months, and shall answer in damages to any person aggrieved by the misconduct or false return. R.S.O. 1960, c. 371, s. 5.

**6.** If a debtor in execution escapes out of legal custody, the sheriff, bailiff, or other person having the custody of the debtor is liable only to an action for the damages sustained by the person at whose suit the debtor was taken or imprisoned, and is not liable to any other action in consequence of his escape. R.S.O. 1960, c. 371, s. 6.

Liability of sheriff, etc., for escape

**7.** A sheriff who wilfully makes any false return to any process directed to him and placed in his hands for execution, unless by consent of both parties to the same, is liable to forfeit his office. R.S.O. 1960, c. 371, s. 7.

Forfeiture of office for false return

**8.** Where an action is brought against a sheriff and a party thereto requires it to be tried by a jury the trial shall take place in such county or district as the court or a judge may direct. R.S.O. 1960, c. 371, s. 8.

Actions against sheriffs

**9.** Upon the delivery of a writ of summons at the office of a sheriff, to be served by him, he or his deputy or clerk, shall endorse thereon the time when it was so delivered, and in case the writ is not fully and completely served within ten days after the delivery, the plaintiff is entitled to receive it back, and the sheriff, deputy sheriff or clerk shall endorse thereon the time of the delivery back; and the cost of the mileage and service of the writ by a literate person afterwards, if the person to be served was at any time during the ten days within the county or district, shall be allowed in the taxation of costs, as if the service had been by the sheriff or his officer. R.S.O. 1960, c. 371, s. 9.

Endorsement of receipt of process; non-service; re-delivery to plaintiff; costs of service

**10.** If the sheriff, being applied to, does not return the writ, after the expiration of the ten days, the plaintiff may issue a duplicate or concurrent writ on the *praecipe* already filed, and the costs of the first or other writ not returned may be charged against and recovered from the sheriff by the plaintiff. R.S.O. 1960, c. 371, s. 10.

Failure by sheriff to redeliver

**11.—(1)** Where, for the purpose of investigating or establishing some title to land, a certificate respecting executions against lands is required from a sheriff, the sheriff if so requested, shall include in one certificate any number of names not exceeding fifteen in respect of which the certificates may be required in the same matter or investigation.

Certificate as to executions

**(2)** The sheriff shall, in such certificate, include all certificates of proof of claims under *The Creditors' Relief Act* that may be in his hands affecting lands.

Sheriff to include certificates under R.S.O. 1970, c. 97

Fees

(3) The maximum fees payable to a sheriff in respect of such certificate is \$6. R.S.O. 1960, c. 371, s. 11.

Office hours

**12.** Except on Saturdays and holidays when they shall be closed, every sheriff's office shall be kept open from 9.30 a.m. until 4.30 p.m. R.S.O. 1960, c. 371, s. 12.

Books to be kept

**13.** The sheriff shall keep in his office,

- (a) process books in which shall be entered a memorandum of every process other than writs of execution or writs in the nature of writs of execution, received by him, the court out of which the process issued, the date of the receipt, the nature of the process, the names of the parties thereto, the solicitor by whom issued, what was done thereunder or therewith and the date and the nature of the return made thereto;
- (b) execution books in which shall be entered a memorandum of every writ of execution, or writ in the nature of a writ of execution received by him, the court out of which the writ issued, the date of the receipt, the nature of the writ, the names of the parties thereto, the solicitor by whom issued, what was done thereunder or therewith and the date and the nature of the return made thereto, or what was done thereunder or therewith;
- (c) a cash book in which shall be entered all moneys received or paid by the sheriff in his official capacity, or in connection with his office, for any service whatever, for fees, poundage, service of process and papers, attendance at courts, moneys levied or collected under execution, or under writs in the nature of writs of execution or otherwise, the date of the receipt or payment and the cause, matter or service in, or on account of which the same was received or paid;
- (d) a separate book in which shall be entered from day to day all fees and emoluments received by him by virtue of his office, and the several amounts disbursed by him in carrying on the work of his office;
- (e) such other books as the Lieutenant Governor in Council may require. R.S.O. 1960, c. 371, s. 13 (1).

Return of fees to Inspector of Legal Offices

**14.** The sheriff shall, on or before the 15th day of January in every year, make, to the Inspector of Legal Offices, a return under oath of the aggregate amount of the fees and emoluments received by him, and of his disbursements, during the previous year, up to and including the 31st day of December. R.S.O. 1960, c. 371, s. 14.

**15.** The sheriff shall, quarterly and within twenty days after the expiration of each quarterly period, transmit to the Inspector of Legal Offices a just, true and faithful account, verified upon oath, of all fines, penalties, and forfeitures that he has been required to levy and make by any lawful authority, and of the receipt and application of the same, or the reason why the same have not been received and applied, and he shall pay over to the proper officer or to the person lawfully entitled to receive the same the several sums collected by him, within twenty days next after the period within which the same have been collected. R.S.O. 1960, c. 371, s. 16.

Sheriff to make quarterly returns of fines, etc.

**16.** The sheriff shall give his attendance upon the judges for the maintenance of good order in Her Majesty's courts, and for the doing and executing of all other things that appertain to the office of sheriff in such case. R.S.O. 1960, c. 371, s. 17.

Duty of sheriff as regards sittings of courts

**17.** The sheriff has the appointment and control of the constables at the sittings of the High Court, the county court, the court of general sessions of the peace, and other courts at which the attendance of the sheriff is required. R.S.O. 1960, c. 371, s. 18.

Appointment of constables

**18.** Where a sheriff is directed by the court to perform any service or do any act for which no fee is provided the sheriff may be allowed such fee as the court may think fit, and it shall be payable as the court may direct. R.S.O. 1960, c. 371, s. 19.

Fees of sheriff when acting under order of court

**19.** The sheriff may at the time of the delivery demand from any person delivering a process or attachment to him to be executed, the fees allowed to him by the tariff for receiving the writ or order and for warrant and return, and a reasonable sum for mileage and the fees and mileage so paid shall, if afterwards collected from the debtor, be repaid by the sheriff to the person who issued such process or attachment. R.S.O. 1960, c. 371, s. 20.

Demanding fees on executions in advance

**20.—(1)** After the expiration of one month from the service of his bill of costs, fees and expenses against a solicitor, the sheriff may serve the solicitor with a notice of an application to the Supreme Court or a judge thereof, or to a judge of a county or district court, returnable not earlier than eight days from the day of service, for payment of the amount of the bill, and the amount claimed shall be stated in the notice.

Actions for fees

**(2)** On the return of the notice, the court or judge may, without reference, direct the payment to the sheriff of the amount of his demand, or of any less amount, either without costs, or with costs to be fixed by an order or to be taxed; or the court or judge may order the bill and the demand thereon to be taxed by the proper

Proceedings on return of notice

officer, and may direct that the officer shall tax to the party entitled thereto his costs of the reference, and may also direct that the sheriff and the solicitor shall respectively pay what may be found due to the other upon the conclusion of the reference and taxation; and the court or judge making the reference shall restrain the bringing of any action pending the reference, and in case the order of reference does not make provision in this behalf, the officer named in the order of reference may, in his discretion, having regard to the matters in dispute between the parties and occasioning the costs, tax the costs of the order and reference, or any part thereof, in favour of either party, or may disallow any part thereof.

Execution  
for amount  
payable

(3) At the expiration of eight days from the date of the order or of the certificate of the taxing officer, as the case may be, the party entitled to payment may sue out a writ of execution for the amount ordered or certified to be payable to him. R.S.O. 1960, c. 371, s. 21.

When  
deputy  
sheriff  
to act as  
sheriff

**21.**—(1) When the office of sheriff becomes vacant or the sheriff is unable to act, the deputy sheriff shall perform the duties of sheriff until a sheriff is appointed and sworn into office or until the sheriff is able to act, and the deputy sheriff is answerable for the execution of the office during such interval as the sheriff would by law have been if he had continued to be in office or to act, and the security given to the sheriff by the deputy sheriff and his pledges, as well as the security furnished on behalf of the sheriff, remains and is a security to Her Majesty and to all persons whomsoever for the performance by the deputy sheriff of the duties of the office during such interval. 1966, c. 144, s. 1 (1).

Where  
there is no  
deputy  
sheriff

(2) Where the office of sheriff becomes vacant and there is no deputy sheriff, the Crown attorney for the county or district, as the case may be, shall be the sheriff *pro tempore* until another person is appointed sheriff, and the Crown attorney on becoming sheriff *pro tempore* may appoint a deputy sheriff, and shall do and perform every other act, matter or thing necessary for the execution of the office. R.S.O. 1960, c. 371, s. 22 (2); 1966, c. 144, s. 1 (2).

Temporary  
officer to be  
responsible

(3) During such interval the sheriff *pro tempore* is answerable for the execution of the office, as the sheriff would by law have been if he had continued to be in office or to act, and any security given by or furnished on behalf of the sheriff remains and is a security to Her Majesty, and to all persons whomsoever, for the performance of the duties of the office by the sheriff *pro tempore* and his deputy. R.S.O. 1960, c. 371, s. 22 (3); 1966, c. 144, s. 1 (3).

All books,  
etc., to be  
the property  
of the Gov-  
ernment

**22.** All books, accounts, records, papers, writs, warrants, process, moneys, and other matters and things in the possession or under the control of a sheriff by virtue of, or appertaining to his

office, are the property of Her Majesty, and upon the death, resignation or removal from office of the sheriff they shall, by the person in whose possession or control they may happen to be or may come, be immediately handed over to and shall be taken possession of by the successor in office of the sheriff, or such person as the Lieutenant Governor in Council may appoint to receive them. R.S.O. 1960, c. 371, s. 23.

**23.** No person, except the successor in office of the sheriff so dying, resigning or removed, or the person appointed by the Lieutenant Governor in Council as aforesaid, shall take, have or hold such books, accounts, records, papers, writs, warrants, process, moneys, or other matters or things, and any person having or holding any of them shall forthwith on demand deliver them over to the succeeding sheriff, or to the person appointed as aforesaid, and, upon default, is guilty of an offence and on summary conviction is liable to a fine of not less than \$10 and not more than \$50, besides costs, for every day's default, and is also liable to imprisonment for a term of not more than three months, unless the fine and costs are sooner paid. R.S.O. 1960, c. 371, s. 24.

No one but the succeeding sheriff to hold books, etc., on pain of fine and imprisonment

**24.** The books referred to in section 13 and all other books, records, processes and documents not pertaining solely to the administration of the staff and management of the office shall be retained by the sheriff for a period of at least twenty years after such books, records, processes and documents cease to be in current use and thereafter may be disposed of in the manner provided in section 3 of *The Archives Act*. 1968-69, c. 118, s. 1.

Disposal of records

R.S.O. 1970, c. 28

**25.—(1)** Upon the removal of a sheriff from office or upon his resignation and the appointment of his successor, the outgoing sheriff, or, in the event of the death of a sheriff, the deputy sheriff or sheriff *pro tempore* shall forthwith make out and deliver to the incoming sheriff a true and correct list and account, under his hand, of all writs and process in his hands not wholly executed by him, with all such particulars as are necessary to explain to the incoming sheriff the matters intended to be transferred to him, and shall thereupon hand over and transfer to the care and custody of the incoming sheriff all such writs and process, and all records, books and matters appertaining to the office of sheriff.

Proceedings on removal, etc., of sheriff

(2) The incoming sheriff shall thereupon sign and deliver a duplicate of the list and account to the outgoing sheriff, or to the deputy sheriff, or sheriff *pro tempore*, to whom the same is a good and sufficient discharge from the execution of the writs and process mentioned therein, without any writ of discharge or other writ whatsoever, and the incoming sheriff thereupon is fully and effectually charged with the execution and care of the writs and process mentioned in the list and account.

Duty of incoming sheriff

Penalty

(3) If the outgoing sheriff, or the deputy sheriff or the sheriff *pro tempore* refuses or neglects to make out, sign and deliver the list and account, and to hand over the writs and process in manner aforesaid, he is liable to any person aggrieved for the damages and costs sustained by such neglect or refusal. R.S.O. 1960, c. 371, s. 25.

Sheriffs re-signing, etc., may examine and inspect books, etc.

**26.** A sheriff, after resigning or being removed or in case of the death of a sheriff, his heirs, executors, or administrators have, at all times, the right, free of charge, to have access to, and to search and examine into all accounts, books, papers, writs, warrants and process of whatever kind, and all other matters and things that were in his possession before his death, resignation or removal, and that, at the time of making or requiring to make such search or examination, are in the possession or control of the succeeding sheriff or the then sheriff of the county or district. R.S.O. 1960, c. 371, s. 26.

Conveyances in case of death, etc., of sheriff who has sold lands

**27.** In case of the death, resignation or removal from office of a sheriff, or of a deputy sheriff while there is no sheriff, or of a sheriff *pro tempore*, after he has made a sale of lands, but before he has made the deed of conveyance of the lands to the purchaser, and whether the sale was under an execution or for arrears of taxes the deed of conveyance shall be made to the purchaser by the sheriff, or by the deputy sheriff who is in office acting as sheriff, or by the sheriff *pro tempore*, at the time when the deed of conveyance is made. R.S.O. 1960, c. 371, s. 27.

Continuation of actions after death, etc., of sheriff

**28.** In case of the death, resignation or removal from office of a sheriff after action brought by him as sheriff, the action may be continued in the name of his successor, to whom the benefit of all securities given to the sheriff in his official capacity enure. R.S.O. 1960, c. 371, s. 28.