

Financial Services Flash

AIRD & BERLIS LLP
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Regulatory Changes to the Ontario Repair and Storage Lien Regime

By: Jessica Millar*

On December 18, 2015, the Government of Ontario announced important impending changes to Ontario's storage and repair laws, designed largely to improve vehicle storage and repair practices and to lower associated costs. Key changes to the Ontario *Repair and Storage Liens Act* will take effect on July 1, 2016, and will benefit vehicle owners, the asset-based finance industry and insurers.

Reducing the Notice Period to Owners and Lienholders

Under the current Act and regulations, persons storing vehicles are permitted to accumulate storage charges for up to 60 days before being required to give notice to the owner or other interested parties of the costs and any attendant possessory lien. This two-month notice period can lead to significant and unpredictable costs to owners and lienholders.

The amendments to the *Repair and Storage Liens Act* and regulations reduce the notice period for vehicles registered in Ontario from 60 to 15 days, where the storer knows or has reason to believe the vehicle was received without the owner's authority. The notice period will remain 60 days for out-of-province vehicles.

These amendments ensure that owners and other interested persons, such as lienholders, have a right to be informed of storage and repair costs and related liens more quickly, reducing associated costs.

Calculating "Fair Value" for Storage and Repair Services

Under the current Act and regulations, where the owner and repairer/storer have not agreed on pricing for the storage

and/or repair of an article, which includes a vehicle, the repairer/storer may charge "fair value" for the storage and/or repair. "Fair value" is undefined under the current Act.

The new regulations introduce much-needed guidance in determining "fair value" pricing for the repair and storage of articles, generally. Specifically, Ontario Regulation 427/15 provides that, as of July 1, 2016, the following factors "shall be included" in determining the fair value of the storage or storage and repair:

- the expenses incurred by the storer in relation to the storage or storage and repair or storage and part of the repair of the article, including expenses related to insurance, transportation, labour, weighing and packing, and
- all lawful claims for money advanced and interest on money advanced by the storer in relation to the article.

In addition, the following factors "shall be considered and may be included":

- the storer's fixed costs, variable costs, direct costs and indirect costs,
- the storer's profit, and
- any other relevant factors.

These changes will help prevent over-charging and enhance cost predictability – a benefit to vehicle owners and the asset-based finance industry.

Conclusion

These important regulatory changes will help develop a more accountable and predictable storage and repair regime, reducing overall claims costs and enhancing consumer protection.

The Financial Services Group at Aird & Berlis LLP has strong knowledge of these amendments and on repair and storage lien regulations generally. For more information, please contact any member of the Financial Services Group. Details can be found on our **Financial Services, Insolvency and Restructuring** web page, by clicking on **members**.

**Jessica Millar is an articling student at Aird & Berlis LLP. She thanks Doug Palmateer, Director of Professional Development, for his assistance.*

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