**Proposed Towing and Vehicle Storage Regulatory Changes**

Summary of Proposed Draft Regulations for Towing and Vehicle Storage in Ontario

Under the Consumer Protection Act and the Repair and Storage Liens Act

**INTRODUCTION**

There are nine million licensed drivers in Ontario. Every day, on roads across this province, some of them run into engine trouble. Some get flat tires. Some are involved in accidents.

Every day in Ontario, many consumers need to get their vehicles towed. Consumers have complained about questionable practices by the tow truck drivers and businesses that tow and then store their vehicles.

In July 2014, the Ontario government took action on this problem. Bill 15, the Fighting Fraud and Reducing Automobile Insurance Rates Act, was introduced as part of the government's ongoing campaign to improve road safety, strengthen consumer protection, and reduce automobile insurance fraud. Four months later, the act received Royal Assent.

In addition to supporting the government's strategy to reduce automobile insurance rates, Bill 15 includes measures intended to protect consumers – specifically drivers who require vehicle towing and storage services. Proposed regulations are being considered that would, if approved, implement the towing and storage related consumer protection measures of Bill 15. This summary report establishes the context for the government's actions, outlines the consultation and engagement process that informed the proposed regulations, and explains what the proposed draft regulations intend to accomplish.

The proposed draft regulations, to be made under the *Consumer Protection Act* (CPA) and the *Repair and Storage Liens Act* (RSLA), are posted on the Government of Ontario’s Regulatory Registry. Members of the public and interested stakeholders are encouraged to review this summary report and/or the proposed draft regulations and provide feedback.

**CONTEXT**

The consumer protection measures in Bill 15 are intended to address:

**High Fees**

Some consumers have been charged extremely high prices by towing businesses to have their vehicle towed. Some consumers also complain about towing businesses using various tactics to justify the higher price, such as using several towing hooks when one would be sufficient, or taking the vehicle to a far-away storage facility to increase mileage charges. It is difficult for consumers to make any kind of informed decision when dealing with a towing business as there are currently no disclosure requirements specific to towing and storage services that apply across the province.

**Requiring Cash Payment and Loss of Tax Revenue**

There have been instances of towing businesses demanding upfront cash payments – sometimes reaching thousands of dollars – from consumers who may be stranded on the side of a road with limited options. In addition, although some municipalities have local rules at this time, there is no formal requirement for towing businesses to provide invoices unless the towing and storage services are in connection with a motor vehicle repair transaction. Due to this, many towing transactions may go unreported, and consequently untaxed. There may also be concerns about inflated or questionable invoice practices.

**Towing Businesses that Use Storage Facilities or Repair Shops in Which They Have a Financial Interest**

Some towing businesses have a financial interest in, or arrangement with, a particular vehicle storage lot or repair shop. Currently, there is no requirement for towing businesses to share this information, so drivers may have their vehicles towed to one of these storage lots without knowing if the businesses are connected or if there is a financial reward paid to the tow truck driver or business for bringing a vehicle to that location.

**Finding Where a Vehicle is and Accessing the Contents**

The RSLA currently requires storers to let vehicle owners and other interested persons know within 60 days after the day of receiving the vehicle, that they have the vehicle, if it was brought to the facility by someone other than the owner or someone having the owner’s authority.

This means the owner of a vehicle may not know where their vehicle is being held for as long as two months. In the end, the owner may be faced with high storage fees. Another problem that a vehicle owner may face is being refused access to their vehicle, even for something as simple as retrieving an article of clothing, until the full bill has been paid. A vehicle owner may sometimes be asked to pay an additional fee to access the vehicle.

**CONSULTATION PROCESS**

The above concerns were among many discussed during a comprehensive engagement and consultation process conducted by the Ministries of Government and Consumer Services (MGCS) and Transportation (MTO) with representatives of the towing and storage sectors and other stakeholders. These consultations were conducted prior to work starting on draft regulations. In early 2015, MGCS and MTO established a 19-member towing and storage panel with representation from the municipal, policing, towing, storage, vehicle financing and leasing, insurance, consumer advocacy and other sectors. The panel was asked to provide recommendations that would help with the development of regulations to support the tow and storage provisions in Bill 15.

The panel met four times between February and May 2015, and delivered its report to the government in June 2015. The panel’s Findings and Recommendations Report reflects their discussions and identifies areas where the panel reached consensus and areas where there were different points of view. It also reflects feedback from five regional consultation meetings that were held in Mississauga, London, Pickering, Ottawa and Sudbury. MGCS and MTO held three other meetings with the municipal, towing and insurance sectors to gather additional feedback.

The panel’s Findings and Recommendations Report includes several recommendations. The report was posted on the Government of Ontario’s Regulatory Registry for comment from July 14 to August 12, 2015. Feedback was received from 26 individuals and organizations. The recommendations, as well as the feedback, informed the proposed draft regulations to be made under the CPA and RSLA that have been posted on the Regulatory Registry as part of the ongoing consultation process.

**PROPOSED REGULATIONS**

There are approximately 1,200 towing and vehicle storage businesses in Ontario, and some 3,000 tow truck drivers. Most provide top-notch service, leaving Ontario’s roads safe and clear, and leaving their customers satisfied. The actions of a few, however, have created a compelling need for the government to act.

Drivers involved in traffic accidents or simply in need of roadside assistance in Ontario have the right to know that the tow truck businesses helping them, and the people storing their vehicles, are reputable, safe, honest and fair. The following proposed draft regulations are intended to help protect consumers by implementing the provisions of Bill 15 that amend the Consumer Protection Act to establish stronger towing and storage consumer protection measures, and those that amend the Repair and Storage Liens Act to address vehicle storage notification and related issues.

**Proposed Consumer Protection Act Regulations**

Part VI.1 of the Consumer Protection Act (CPA) and the proposed draft regulations to be made under it would establish consumer protection measures specific to the tow and storage sectors.

**Definitions**

For the purposes of this regulation, a tow and storage provider means:

* A tow and storage services operator; and
* A tow truck broker or a tow truck driver.

In all cases a tow and storage provider would be a supplier under the CPA.

A definition is proposed for a tow and storage services operator. For tow services, it would be a supplier who holds or is required to hold a valid Commercial Vehicle Operator’s Registration (CVOR) certificate for a commercial motor vehicle, for driving or operating a tow truck under the Highway Traffic Act (HTA). It would also include a supplier, who would have been required to hold a CVOR certificate if one or more of its trucks had been registered under the HTA, in order to capture a supplier with a tow truck from another province, who is engaging in a transaction with a consumer in Ontario.

For storage services, a tow and storage services operator would mean a supplier who provides storage services in respect of a tow service that is subject to Part VI.1 of the CPA, such as when a vehicle is towed to a storage facility after breaking down on the highway. A tow and storage services operator can be one that provides only tow or storage services or both.

**Disclosure**

Towing and storage providers would be required to give consumers the following information, before the consumer or a person acting on the consumer’s behalf gives authorization for the services:

* The name of the provider and, if different, the name under which the provider carries on business;
* The telephone number of the provider, the address of the principal place of business and information about other ways, if any, that the consumer can contact the provider, such as by fax, email or through a website;
* A current statement of rates; and
* The address of the location where the provider will take the vehicle.

In addition, a tow and storage provider must disclose if it has a direct or indirect interest in a location or facility where vehicles may be towed for repair, storage or appraisal.

This disclosure requirement would not apply in circumstances where a tow and storage provider provides services as a result of the vehicle being impounded, detained under the authority of other laws, or otherwise lawfully seized.

**Authorization**

A tow and storage provider would be required to get a written authorization from the consumer. If the consumer is unable to give authorization as a result of the circumstances – for example due to injury – it could be provided by a person acting on behalf of the consumer. The authorization would have to include the name and contact information of the consumer or the person acting on their behalf, and the date and time the authorization was given. A copy of the authorization would have to be given to the consumer or the person acting on their behalf. If the authorization is not given in writing, it would have to be recorded in a way that would allow the person who gave the authorization to retain and make a copy of it.

An authorization would not apply in circumstances where a tow and storage provider provides services as a result of the vehicle being impounded, detained under the authority of other laws, or otherwise lawfully seized.

**Prohibitions**

*Recommendations*

A tow and storage provider would not be allowed to recommend salvage yards, auto body repair shops, storage yards or garages unless they are asked by the consumer to do so. If a recommendation is given, the tow and storage provider would have to give a written statement of the benefits due to the provider, or another person as a result of making the recommendation. This written statement would have to be given no later than when the consumer is authorizing the tow, where an authorization is required. The written statement must be given as soon as practical, if an authorization is not required.

*Fees*

A tow and storage provider would not be allowed to charge an amount for services that is greater than what the provider usually charges, just because the tow or storage services are provided as a result of a vehicle having been impounded or otherwise detained under the authority of any other act or regulation, or municipal by-law, unless there is an agreement in place providing for terms of payment for these types of tows.

**Identifiers on Tow Trucks and at Business Premises**

Tow and storage providers would be required to clearly post on both sides of every tow truck that they operate:

* The name of the provider, and if different, the name under which the provider carries on business;
* The telephone number of the business; and
* If applicable, the provider’s municipal licence number.

This information would be required to be posted at all business premises from which the provider operates. If the tow and storage provider operates more than one tow truck, a unique number that identifies each truck would also be required to be posted.

The tow and storage provider would be required to have a copy of the current statement of rates available at all business premises from which they conduct business, and on their website (if one is maintained).

**Invoice Requirements**

Tow and storage providers would be required to deliver a written invoice that contains:

* The provider’s name and, if different, the name under which the provider carries on business;
* The telephone number of the provider;
* If the provider operates more than one tow truck, the unique number identifying the tow truck providing the services;
* The provider’s municipal business licence number, if applicable;
* The make, model, vehicle identification number and licence number of the vehicle being towed;
* The date and time when the services are provided or will be provided;
* The address of the location where the services started, the address of the location where the vehicle was towed to, the address of any stops anticipated or have occurred in between, and if applicable the business name of each of those locations;
* A unique invoice number;
* The name of the tow truck driver; and
* An itemized list of services and the cost for each service, as well as the total cost.

These invoice requirements would not apply in circumstances where a tow and storage provider provides tow and storage services as a result of the vehicle being impounded, detained under the authority of other laws, or otherwise lawfully seized.

**Insurance Requirements**

A tow and storage provider who offers tow services would be required to maintain the following insurance:

* Coverage against liability resulting from bodily injury to or the death of one or more persons and loss or damage to property, in the amount of at least $2 million exclusive of interests and costs;
* Coverage against liability for damage to a vehicle while in the provider’s care, custody or control, in the amount of at least $100,000; and
* Cargo liability insurance in the amount of at least $50,000.

These insurance requirements would not apply in circumstances where a tow and storage provider provides tow and storage services as a result of the vehicle being impounded, detained under the authority of other laws, or otherwise lawfully seized.

**Access to Vehicle**

Tow and storage providers would have to give a consumer whose vehicle is towed or stored, or a person acting on their behalf, access to the vehicle without charge to remove all property contained in the vehicle belonging to or in the care of the consumer. This could include money, documents and records. A tow and storage provider shall not retain anything that a consumer is entitled to remove to pressure the consumer into making a payment under the agreement for tow and storage services.

Access shall be provided from 9:00am to 6:00pm from Monday to Friday at the location where the vehicle is stored. A reasonable fee can be charged for access outside those times.

These access provisions would not apply in circumstances where a tow and storage provider provides tow and storage services as a result of the vehicle being impounded, detained under the authority of other laws, or otherwise lawfully seized.

**Proposed Repair and Storage Lien Act Regulations**

The proposed draft regulation under the Repair and Storage Liens Act(RSLA)include provisions dealing with how much notice a person claiming a lien must give to persons with an interest in a vehicle, if it was brought to the facility by someone other than the owner or someone having the owner’s authority. If the notice is not given, the amount of lien that can be claimed would be limited (a lien is an interest in property to secure payment of a debt). The draft regulation also deals with how fair value is determined for repair and storage where no amount was agreed to.

Repairer’s and Storer’s Lien – Determination of Fair Value

To determine the fair value of the repair or part of a repair of a vehicle, it is proposed that the following factors shall be considered and may be included in calculating the fair value amount:

* The repairer’s fixed costs, variable costs, direct costs and indirect costs;
* The repairer’s profit; and
* Other relevant factors.

To determine the fair value of storage, storage and repair, or storage and part of a repair of a vehicle, it is proposed that certain factors would continue to be included, such as expenses related to insurance and labour, and all lawful claims for money advanced in relation to the vehicle. This reflects the current rules, under the RSLA, that require that those amounts be included in determining fair value. The proposed amendments would add additional factors that shall be considered and that may be included in calculating the fair value amount. These additional factors are the storer’s fixed costs, variable costs, direct costs and indirect costs, as well as the storer’s profit and any other relevant factors.

**Notice**

A storer currently has 60 days after the day it receives a vehicle, to inform the owners and other interested persons of the lien, where a storer knows or has reason to believe that the motor vehicle was received from a person other than the owner or a person having the owner’s authority. It is proposed that the 60-day notice period be shortened to 15 days when the motor vehicle is registered in Ontario.

The notice period would remain 60 days for vehicles registered in another province or country.

Proposed amendments would provide that where documents are required to be or may be given under the RSLA, they can be sent electronically or faxed. This would be in addition to the methods identified currently in the RSLA, such as by delivering the document personally or by certified or registered mail.

No lien arises for tow and storage services that are subject to the Consumer Protection Act, unless the provisions regarding disclosure, authorization, invoicing, insurance and disclosure of an interest has been complied with. For example, if an authorization to tow is required and none is obtained, no lien would arise for that unauthorized tow service.

**WHAT’S NEXT**

In preparing the proposed draft regulations, the government consulted with a broad cross-section of stakeholders to identify issues, develop options and consider solutions. Their collective input is reflected in the proposed draft regulations. The government is continuing to seek input and feedback on these regulation proposals.

This summary report is posted along with the proposed draft regulations on the Government of Ontario’s Regulatory Registry for 45 days, from September 16 to October 30, 2015. It is intended to provide background and context to support the feedback process.

If the final proposed regulations are approved, it is expected that the changes would be phased in beginning in early 2016.

The Government of Ontario is taking action to increase road safety and strengthen consumer protection in the towing and vehicle storage sectors. The CPA and RSLA provisions of Bill 15 and proposed regulations under each would assist in bringing consistency to consumer protection for towing and vehicle storage services.

We understand that consumers expect, and have a right to expect, that if and when they run into trouble on the road, they will be treated fairly, safely, and honestly by any tow and storage provider they deal with. The Ontario government is committed to ensuring that these expectations are met. New rules, once in effect, will assist in protecting Ontario consumers.