

[Intact Insurance v. 2229152 Ontario Ltd. \(c.o.b. Royal Windsor Collision Centre\), \[2017\] O.J. No. 2695](#)

Ontario Judgments

Ontario Superior Court of Justice

D.K. Gray J.

Heard: May 24, 2017.

Judgment: May 26, 2017.

Court File No.: 2169/17

[2017] O.J. No. 2695 | 2017 ONSC 3282 | 280 A.C.W.S. (3d) 635 | 68 C.C.L.I. (5th) 248 | 2017 CarswellOnt 8001

Between Intact Insurance, Applicant, and 2229152 Ontario Limited o/a Royal Windsor Collision Centre, Respondent

(59 paras.)

Case Summary

Civil litigation — Civil procedure — Actions — Joinder and consolidation — Courts — Jurisdiction — Provincial and territorial courts — Small claims court — Small claims proceedings — Motion by Royal Windsor to terminate respondent insurer's proceeding allowed — Royal Windsor towed and stored vehicle insured by insurer that had been damaged in accident — Royal Windsor commenced Small Claims Court action for determination that it had lien on vehicle in amount of \$24,642 — Insurer commenced application for initial certificate under Repair and Storage Lien Act and paid money into court — Insurer's claim was to be transferred to Small Claims Court and consolidated with Royal Windsor's application — Since amount claimed was under \$25,000, there was no reason it could not proceed in Small Claims Court.

Commercial law — Liens — Possessory liens — Storer's liens — Motion by Royal Windsor to terminate respondent insurer's proceeding allowed — Royal Windsor towed and stored vehicle insured by insurer that had been damaged in accident — Royal Windsor commenced Small Claims Court action for determination that it had lien on vehicle in amount of \$24,642 — Insurer commenced application for initial certificate under Repair and Storage Lien Act and paid money into court — Insurer's claim was to be transferred to Small Claims Court and consolidated with Royal Windsor's application — Since amount claimed was under \$25,000, there was no reason it could not proceed in Small Claims Court.

Motion by Royal Windsor to terminate Intact's (the "insurer") proceedings and to allow its Small Claims Court action to proceed. In February 2017 a vehicle insured by the insurer was damaged in an accident. Royal Windsor towed the vehicle to its lot. An appraiser attended at Royal Windsor and determined that the vehicle was a total loss. The insurer settled the claim with its insured and the vehicle was transferred to it. Approximately a year later, Royal Windsor advised the insurer that the payout was \$687 for the towing and \$25,289 for 373 days at \$60 per day for storage. Royal Windsor then applied to the Small Claims Court requesting a determination that it had a lien in the vehicle and that the lien was in the amount of \$24,642. The insurer was of the position that the amount sought by Royal Windsor was exorbitant. It was prepared to pay something, but not the amount Royal Windsor sought. It applied to this court for an initial certificate under the Repair and Storage Lien Act and paid \$32,000 into court, including \$4,395 which had been offered in settlement for the dispute. Royal Windsor submitted that it commenced its action under s. 23 of the Act first and therefore it took precedence. In addition, it argued that it would be more efficient and economical for the matter to be determined in the Small Claims Court.

HELD: Motion allowed.

The insurer's claim was to be transferred to the Small Claims Court and consolidated with Royal Windsor's application in the Small Claims Court. The sum of \$24,642 being held in court was to be transferred to the Small Claims Court and the rest was to be returned to the insurer. Since Royal Windsor's claim was for less than \$25,000, there was no reason it could not proceed in the Small Claims Court.

Statutes, Regulations and Rules Cited

Courts of Justice Act, s. 106

Repair and Storage Liens Act, s. 1, s. 3, s. 4, s. 5, s. 7, s. 12, s. 15, s. 16, s. 18, s. 22, s. 23, s. 23(1)(d), s. 23(2), s. 24, s. 24(7), s. 25, s. 28

Counsel

Lisa M. Carr, for the Applicant (Responding Party).

Adam Jarvis, for the Respondent (Moving Party).

D.K. GRAY J.

1 The *Repair and Storage Liens Act* provides for expedited procedures to determine disputes between those who repair and/or store articles, particularly motor vehicles, and those who own them.

2 Many such disputes involve motor vehicles that have been involved in accidents. Most often, such vehicles are towed to repair and storage facilities. Insurance companies make assessments as to whether such vehicles can be repaired or not. It is usually the insurance companies that deal with the repair/storage facilities on whether a vehicle will be repaired, what it will cost, and what other charges, such as towing and storage, will be.

3 In some cases, the car is regarded as a total loss. That is when many disputes arise. The car will sometimes sit in the storage facility accumulating storage charges. To get the car released, the charges have to be paid. The longer the car sits there, the more the charges accumulate.

4 The storage facility wants to collect all of its storage charges. The insurer wants to get the car, but does not want to pay exorbitant storage charges.

5 This is one of those cases. The respondent ("Royal Windsor") has in its possession a car that has effectively been written off by Intact Insurance ("Intact"), the applicant. Royal Windsor wants to collect roughly \$25,000 in storage charges. Intact thinks that amount is exorbitant. Intact is prepared to pay something, but not what Royal Windsor wants.

- 6 The dispute is over how the impasse is to be resolved.
- 7 Intact wants to pay the amount claimed by Royal Windsor into court, get the car, and fight over the amount owing later.
- 8 Royal Windsor wants to keep the car and apply to the Small Claims Court for a simple order deciding how much is to be paid for the storage charges.
- 9 Competing applications have been filed in the Small Claims Court and in this court. Royal Windsor now moves for an order terminating Intact's proceedings in this court (to pay the money into court, release the car, and determine the amount owing later) and simply allow Royal Windsor's Small Claims Court application to proceed.
- 10 For the reasons that follow, I will order that Intact's application in this court be transferred to the Small Claims Court and consolidated with Royal Windsor's application in the Small Claims Court.

Background

- 11 On February 17, 2016, a Jeep Grand Cherokee, owned by one Samuel Sevazelian, was damaged in an accident. It was insured by the applicant, Intact.
- 12 On the same day, Mr. Sevazelian reported the accident to Intact, and advised that the Jeep was located at the Royal Windsor Collision Centre.
- 13 On February 19, 2016, an appraiser retained by Intact attended at Royal Windsor and determined that the Jeep was a total loss.
- 14 On February 23, 2017, a representative of Intact contacted Royal Windsor and was advised that the payout was \$687.66 for towing and \$25,289.40 for 373 days at \$60 per day for storage.
- 15 As of March 3, 2016, Intact had settled the property damage claim for the loss of the Jeep with Mr. Sevazelian, and the Jeep was transferred to Intact.
- 16 On April 21, 2017, a representative of Intact wrote to Royal Windsor to confirm the amount of fees being claimed and to provide an offer to resolve the dispute.
- 17 On May 11, 2017, Royal Windsor applied to the Burlington Small Claims Court pursuant to s. 23 of the *Repair and Storage Liens Act*, requesting a determination that Royal Windsor has a valid lien on the Jeep, and a determination that the lien is in the amount of \$24,642.66. Royal Windsor has confirmed that it has abandoned any claim in excess of that amount in order that the Small Claims Court have jurisdiction over the dispute. The Burlington Small Claims Court has fixed a date of June 22, 2017 to hear the application.
- 18 The application by Royal Windsor under s.23 of the *Repair and Storage Liens Act* was served on Intact on May 12, 2017.
- 19 On May 12, 2017, Intact made application to this court for an initial certificate under s. 24 of *Repair and Storage Liens Act*, and paid into court the amount of \$32,000 in the full amount claimed by Royal Windsor, which amount included the payment into court of \$4,395.70 as an offer to settle the dispute. On May 12, 2017, an initial certificate under s.24 of the *Act* was issued by the registrar, certifying that Intact had paid into court the amount of \$32,000, being the full amount claimed by Royal Windsor, and which amount includes the payment into court of \$4,395.70 in settlement of the dispute.
- 20 By letter of the same day, May 12, 2017, a paralegal in the office of counsel for Intact wrote to Royal Windsor

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confirming that Royal Windsor was served with the initial certificate under s.24 of the *Act* on May 12, 2017, and requested release of the car. A further request for the car was sent on May 15, 2017.

Submissions

21 Mr. Jarvis, counsel for Royal Windsor, the moving party, submits that the procedures under ss. 23 and 24 of *Repair and Storage Liens Act* are mutually exclusive. He submits that Royal Windsor commenced its application under s.23 of the *Act* first, and that proceeding must take precedence.

22 Mr. Jarvis submits that while his client's claim actually exceeds \$25,000, his client has deliberately restricted the amount of its claim to less than \$25,000. Thus, the Small Claims Court has jurisdiction to entertain his client's application.

23 Intact's application, on the other hand, was instituted in this court, and the amount of \$32,000 has been paid into court.

24 Mr. Jarvis submits that it would be far more economical and efficient to have the proceeding dealt with in the Small Claims Court as opposed to this court. Furthermore, he submits that the jurisdiction of the court that hears a dispute under s. 23 of the *Act* is very broad, and clearly includes a determination of the amount of the lien that can be claimed by Royal Windsor, and an ability to require the appropriate amount to be paid to Royal Windsor.

25 In the final analysis, Mr. Jarvis submits that there are significant policy reasons why the matter should be determined in the Small Claims Court as opposed to this court. Fundamentally, however, he submits that in view of the fact that his client commenced its proceeding first, this court is deprived of jurisdiction to entertain Intact's application under s. 24 of the *Act*.

26 Mr. Jarvis particularly relies on the wording of s. 23(2) of the *Act*. Section 23 of the *Act*, with the words of s.23(2) that are particularly relied on highlighted, is as follows:

23.(1) Any person may apply to a court for a determination of the rights of the parties where a question arises with respect to,

- (a) the seizure of an article under Part II (Non-possessory Liens), any right of seizure in respect of the article, whether the costs of seizure are recoverable or whether they exceed the amount permitted under subsection 14 (3.1);
- (b) the sale of an article under Part III (Redemption, Sale or Other Disposition);
- (c) the distribution of the proceeds of the sale of an article under Part III, including the right of any person to share in those proceeds, and the obligation of any lien claimant to account for those proceeds;
- (d) the amount of a lien or the right of any person to a lien; and
- (e) any other matter arising out of the application of this Act,

and the court may make such order as it considers necessary to give effect to those rights.

(2) An application shall not be made under clause (1)?(d) where an application has been made under section 24. [Emphasis added]

27 Mr. Jarvis points out and relies on the words "has been made" in s. 23(2). He submits that the court is only deprived of jurisdiction to make an order under s. 23(1)(d) where an application under s. 24 "has been" made. His client's application falls under s. 23(1)(d), and at the time it was filed there was no application under s. 24. Accordingly, Intact's subsequent application under s. 24 can have no effect on his client's application.

28 Mr. Jarvis relies on *Hamilton v. 1262108 Ontario Inc.* ([2001](#), [55 O.R. \(3d\) 19](#) (C.A.); and *Dew v. MCM Towing*, [\[2014\] O.J. No. 6230](#) (Small Claims Court).

29 Ms. Carr, counsel for Intact, the responding party, submits that Royal Windsor's motion should be dismissed, and Intact's application under s.24 of the *Act* should proceed to its conclusion. In the alternative, although Ms. Carr does not urge this result, the court could order that Intact's application under s.24 of the *Act* be transferred to the Burlington Small Claims Court to be consolidated with the application under s.23. Some of the funds in court, consisting of the amount now claimed by Royal Windsor, would be transferred to the credit of the Burlington Small Claims Court application, and the car would be released.

30 Ms. Carr submits that while the procedures under ss.23 and 24 of the *Act* are considered to be mutually exclusive, that simply means that relief can be awarded only under one of them. She submits that there is nothing that would prohibit both applications to be filed, and if they are, it will be for the court to fashion a mechanism to determine the underlying dispute in a reasonable manner.

31 Ms. Carr points out that s. 24 of the *Act* applies only where there is a possessory lien, as opposed to a non-possessory lien. A possessory lien arises where repair work or storage has been provided, and the repairer or storage facility has possession of the vehicle. If possession of the vehicle is given up, the possessory lien is lost. Section 24 provides a mechanism to allow for cash to be substituted for the vehicle. Possession of the vehicle can be given up, and the court can resolve the dispute as to which party is entitled to the cash, and how much.

32 Ms. Carr points out that under s. 24 of the *Act*, judicial involvement only comes about after money has been paid into court and the car has been released. At that point, the court will be involved to resolve the dispute as to how much money, if any, the repairer or storage facility is entitled to. The money is in court, so the repairer or storage facility is fully protected. It no longer needs to keep the car.

33 Ms. Carr submits that s. 23 of the *Act* is much broader in its terms. It applies where virtually any dispute arises under the *Act*. However, significantly, pursuant to s. 23(2), the procedure under s.23 cannot be utilized where the dispute involves the amount of a lien or the right of any person to a lien, where an application has been made under s. 24.

34 Ms. Carr submits that it would not be appropriate to interpret the words "has been made" in s. 23(2) to mean that the court must focus on the time at which each application has been brought. If that were the case, the so-called jurisdictional issue would be resolved by determining which party has won the foot race to the courthouse. A more sensible interpretation, Ms. Carr submits, is to conclude that the legislature has clearly said that where the essence of the dispute is the amount of money the repairer or storage facility is entitled to, and the owner or insurer wishes to retrieve the vehicle, the simple and expeditious procedure under s. 24 is to prevail if it is used.

35 Ms. Carr relies on *1218897 Ontario Ltd. (c.o.b. Castle Auto Collision & Mechanical Service) v. Certas Insurance*, [\[2016\] O.J. No. 264](#) (Div. Ct.); *1218897 Ontario Ltd. (c.o.b. Castle Auto Collision & Mechanical Service) v. McEachern*, [\[2016\] O.J. No. 1702](#) (Small Claims Court); *2237446 Ontario Inc. (c.o.b. 409 Collision Centre) (2011) v. Intact Insurance*, [\[2016\] O.J. No. 6336](#) (S.C.J.); *1218897 Ontario Ltd. (c.o.b. Castle Auto Collision and Mechanical Service) v. Intact Insurance Co.*, [\[2013\] O.J. No. 6508](#) (Small Claims Court); and *Deol v. Motosport Recovery Storage Facilities*, [\[2013\] O.J. No. 6208](#) (Small Claims Court).

Analysis

36 Tactical considerations loom large in resolving in what appears to be a rather simple dispute.

37 The real dispute is whether Royal Windsor can recover a large amount of storage charges where the car has been written off and has little value. The insurer obviously does not want to pay any more than a minimal amount of storage charges in order to get the car.

38 Unless Royal Windsor can establish that there is an actual agreement as to how much in the way of storage fees it can charge (and it is doubtful it can do so), the real dispute is what is a reasonable amount that Royal Windsor can charge.

39 Royal Windsor does not want to give up the car before having the amount it is entitled to determined. It wants to retain as much leverage as it can.

40 Right now, Royal Windsor has a date in small claims court of June 22, 2017 to have its claim determined. It wants to keep that date, rather than have its claim for money paid into court determined, potentially many months later.

41 Intact, on the other hand, wants to get the car and salvage as much as it can out of it. It can only do so once it gets its hands on the car. Section 24 of the *Act* provides a solution -- Intact can pay the disputed amount into court and get the car right away. A fight over the money can take place later.

42 These tactical considerations can play little part in resolving the dispute. It can be resolved by considering ss. 23 and 24 of the *Act* in the context of the statute as a whole. I have attached as an Appendix the relevant provisions excerpted from the *Repair and Storage Liens Act*.

43 The statute deals with both "possessory liens" and "non-possessory liens". They are similar, in that they attach to articles to which repairs have been effected and/or that have been stored.

44 Pursuant to articles 3 and 4 of the *Act*, a repairer and/or storer has a lien for unpaid amounts for repair or storage, and the repairer or storer may retain possession of the article until the charges have been paid.

45 A non-possessory lien arises where a person entitled to a possessory lien gives up possession of the article without having been paid the amount to which the lien claimant is entitled.

46 Section 24 of the *Act* is available only in the case of a possessory lien.

47 Under s. 24, what is set out is an expeditious procedure for the return of the article to the owner, and the substitution of cash in court for the article, and a mechanism is set out for the determination of the dispute, usually over the amount owing. The lien holder is fully protected, because the full amount of his or her claim is paid into court.

48 In substance, what is set out is a procedure under which the owner (or insurer) can apply for an "initial certificate", and at the same time pay the full amount of the lien claim into court. Within three days, the lien claimant must release the article or file a notice of objection, claiming there should be an additional amount owing. Where the lien claimant pays the additional amount claimed into court, the clerk or registrar shall issue a final certificate, after which the lien claimant must immediately release the article. If it is not released, the applicant may obtain a writ of seizure and require the sheriff to seize the article.

49 Thus, as can be seen, s. 24 is narrow in its scope. It provides for a simple, expeditious procedure to be utilized in one narrow circumstance -- that is, where the real matter in dispute is the amount of the lien claim, and the lien claimant has possession of the article. In such a case, the article can be released in exchange for cash in court in the amount of the lien claim. The entitlement to the money in court can be fought out in court later.

50 Section 23 of the *Act*, on the hand, applies to virtually any other case that can arise under the *Act*. It is very broad in its scope.

51 Section 23 can be used where the dispute relates to the amount of a lien or the right of any person to a lien. Of significance, however, such a claim cannot be pursued "where an application has been made under s. 24."

52 I do not accept the argument of Mr. Jarvis that the words "has been" mean that where an application under s. 23 has been commenced first, the court is deprived of jurisdiction to entertain an application under s. 24. As noted by Ms. Carr, to accept such an interpretation would mean that the legislature intended that the jurisdiction of the court would depend on which party won the race to the courthouse steps. It is more sensible, in my view, to interpret s. 23(2) as carving out an exception to the broad scope of s. 23, where s. 24 is applicable and is being used. On such an interpretation, the words "has been" do not take on the temporal limitation urged by Mr. Jarvis, rather they signify a jurisdictional limitation on the ambit of s. 23.

53 That is not to say that the court, in appropriate circumstances, cannot impose a limitation on the use of s. 24 where it appears that it is being abused, or might be abused. For example, if a proceeding under s. 23 has been underway for some time, and is about to be determined, the late utilization of s. 24 might not be regarded as appropriate. In the right circumstances, the court could, pursuant to s. 106 of the *Courts of Justice Act*, stay an application under s. 24.

54 Of significance, in my view, is s. 25 of the *Act*, which provides that an application "may be brought in any court of appropriate monetary jurisdiction." Clearly, this is intended to give jurisdiction to the Small Claims Court where the amount in dispute is less than \$25,000.

55 That brings me to the appropriate resolution of this case. Royal Windsor has restricted the amount of its claim to less than \$25,000. Indeed, it did so in order to give the Small Claims Court jurisdiction over its application under s. 23 of the *Act*. Since the amount in dispute is under \$25,000, I see no reason why Intact's application under s. 24 of the *Act* should not be heard and determined in the Small Claims Court.

56 It is clear that a judge of this court has the inherent jurisdiction to transfer a proceeding in this court to the Small Claims Court: see *Shoppers Trust Co. v. Mann Taxi Management Ltd.* (1993), 16 O.R. (3d) 192 (Gen. Div.); *Graves v. Avis Rent-a-Car System Inc.* (1993), 21 C.P.C. (3d) 391 (Ont. Gen. Div.); and *Roberts v. 603418 Ontario Inc.* (c.o.b. J.P. Motor Sales), [2014] O.J. No. 5048 (S.C.J.).

Disposition

57 I order as follows:

- a) This application under s. 24 of the *Repair and Storage Liens Act* shall be transferred to the Burlington Small Claims court and consolidated with Burlington Small Claims Court File no. 490/17 RSLA;
- b) The sum of \$24,642.66, currently held by the Accountant of this court to the credit of court file no. 2169/17, shall be transferred to the credit of the Burlington Small Claims court file no. 490/17 RSLA;
- c) The balance of the money in court, to the credit of court file no. 2169/17, shall be returned to the applicant, Intact Insurance.

58 Any further proceedings under s. 24 must be processed in the Small Claims Court. At this point, there is only an initial certificate. As far as I know, no objection has been filed pursuant to s. 24(7). Any requirement to release the vehicle flows from s. 24 of the *Act*, and does not require an order of the court.

59 I will entertain brief written submissions as to costs, not to exceed three pages, together with a costs outline. Ms. Carr shall have five days and Mr. Jarvis an additional five days to respond. Ms. Carr shall have three days to reply.

D.K. GRAY J.

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Appendix

Excerpts from the *Repair and Storage Liens Act*

1. (1) In this Act,

"lien claimant" means a person who is entitled to claim a lien for the repair, storage or storage and repair of an article;

"repair" means an expenditure of money on, or the application of labour, skill or materials to, an article for the purpose of altering, improving or restoring its properties or maintaining its condition and includes,

- (a) the transportation of the article for purpose of making a repair,
- (b) the towing of an article,
- (c) the salvage of an article;

"repairer" means a person who makes a repair on the understanding that the person will be paid for the repair;

"storer" means a person who receives an article for storage or storage and repair on the understanding that the person will be paid for the storage or storage and repair, as the case may be.

3. (1) In the absence of a written agreement to the contrary, a repairer has a lien against an article that the repairer has repaired for an amount equal to one of the following, and the repairer may retain possession of the article until the amount is paid:

1. The amount that the person who requested the repair agreed to pay.
2. Where no such amount has been agreed upon, the fair value of the repair, determined in accordance with any applicable regulations.
3. Where only part of a repair is completed, the fair value of the part completed, determined in accordance with any applicable regulations.

(2) A repairer's lien arises and takes effect when the repair is commenced, except that no repairer's lien arises if the repairer was required to comply with sections 56 and 57, subsection 58 (1) and section 59 of the *Consumer Protection Act, 2002*, if applicable, and the repairer has not done so.

4. (1) Subject to subsection (2), a storer has a lien against an article that the storer has stored or stored and repaired for an amount equal to one of the following, and the storer may retain possession of the article until the amount is paid:

1. The amount agreed upon for the storage or storage and repair of the article.
2. Where no such amount has been agreed upon, the fair value of the storage or storage and repair, determined in accordance with any applicable regulations.
3. Where only part of a repair is completed, the fair value of the storage and the part of the repair completed, determined in accordance with any applicable regulations. 2014,

(2) A storer is not entitled to a lien for a repair made to an article unless the repair is made by the storer on the understanding that the storer would be paid for the repair or unless subsection 28 (2) applies.

(3) A storer's lien arises and takes effect when the storer receives possession of the article for storage or storage and repair, except that no storer's lien arises with respect to repair if the storer was required to comply with sections 56 and 57, subsection 58 (1) and section 59 of the *Consumer Protection Act, 2002*, if applicable, and the storer has not done so.

- (4) Where the storer knows or has reason to believe that possession of an article that is subject to a lien was received from a person other than its owner or a person having its owner's authority, the storer, within 60 days after the day of receiving the article, shall give written notice of the lien to every person whom the storer knows or has reason to believe is the owner or has an interest in the article, including every person who has a security interest in the article that is perfected by registration under the *Personal Property Security Act* against the name of the person whom the storer knows or has reason to believe is the owner.
- (7) The storer has the right to sell an article that is subject to a lien in accordance with Part III (Redemption, Sale or Other Disposition) upon the expiration of the sixty-day period following the day on which the amount required to pay for the storage or storage and repair becomes due.
- 5.** A lien under this Part is discharged and cannot be revived as an interest in the article if possession of the article that is subject to the lien is surrendered to, or lawfully comes into the possession of, the owner or any other person who is entitled to receive a notice under subsection 15 (2).
- 7.** (1) A lien claimant who is entitled to a lien under Part I (Possessory Liens) against an article, and who gives up possession of the article without having been paid the full amount of the lien to which the lien claimant is entitled under Part I, has, in place of the possessory lien, a non-possessory lien against the article for the amount of the lien claimed under Part I that remains unpaid.
- (2) A non-possessory lien arises and takes effect when the lien claimant gives up possession of the article.
- 10.** (1) A non-possessory lien is enforceable against third parties only if a claim for lien has been registered, and, where a person acquires a right against an article after a non-possessory lien arises, the right of the person has priority over the non-possessory lien of the lien claimant if a claim for lien was not registered before the person acquired the right.
- 12.** (1) A non-possessory lien is discharged and cannot be revived as an interest in the article,
- (b) upon payment into court under Part IV (Dispute Resolution) of the amount set out in the claim for lien;
- 15.** (1) A lien claimant who has a right, under this Act, to sell an article shall not exercise that right unless the lien claimant has given notice of intention to sell the article.
- 16.** (1) Where a lien claimant has sold an article under this Part, the proceeds of sale shall be applied consecutively,
- (a) to the reasonable expenses of selling the article;
- (b) to the costs of seizure;
- (c) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of the lien claimant making the sale;
- (d) where the lien claimant making the sale has a possessory lien under Part I, to the satisfaction of the lien of every lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;
- (e) where the lien claimant making the sale has a non-possessory lien under Part II, to the satisfaction of the lien of the lien claimant making the sale and to the satisfaction of the lien of every other lien claimant who has a registered non-possessory lien under Part II against the article, who gives the lien claimant making the sale written notice of the amount owing in respect of the registered non-possessory lien claimed by the person giving the notice before or within ten days after the sale, in reverse order to the order in which the lien claimants gave up possession;

- (f) to the payment of every person who has a perfected security interest in the article under the *Personal Property Security Act* who was entitled to notice under subsection 15 (2), who gives the lien claimant written notice of the amount owing in respect of the perfected security interest claimed by the person giving the notice before or within ten days after the sale, in accordance with the priority rules under that Act; and
 - (g) to the payment of the owner or other person entitled thereto, if the lien claimant has actual knowledge of the claim of that person.
- (2) Where there is a question concerning the right of any person to share in the proceeds of a sale, the lien claimant may pay the proceeds or any part thereof into court and the proceeds shall not be paid out of court except in accordance with an order made under section 23.

18. Where a lien claimant,

- (a) sells an article under section 15; or
- (b) is deemed to have elected irrevocably to retain the article under subsection 17 (4),

the lien claimant shall be deemed to have sold the article or retained the article in full satisfaction of the amount owing in respect of the lien.

22. At any time before the lien claimant,

- (a) has sold the article under section 15 or contracted for such sale;
- (b) is deemed to have irrevocably elected to retain the article under section 17; or
- (c) has given the article to a charity under section 19,

the owner and any person referred to in subsection 15(2) may redeem the article by paying the amount required to satisfy the lien.

23. (1) Any person may apply to a court for a determination of the rights of the parties where a question arises with respect to,

- (a) the seizure of an article under Part II (Non-possessory Liens), any right of seizure in respect of the article, whether the costs of seizure are recoverable or whether they exceed the amount permitted under subsection 14 (3.1);
- (b) the sale of an article under Part III (Redemption, Sale or Other Disposition);
- (c) the distribution of the proceeds of the sale of an article under Part III, including the right of any person to share in those proceeds, and the obligation of any lien claimant to account for those proceeds;
- (d) the amount of a lien or the right of any person to a lien; and
- (e) any other matter arising out of the application of this Act,

and the court may make such order as it considers necessary to give effect to those rights.

- (2) An application shall not be made under clause (1)(d) where an application has been made under section 24.

24. (1) Where a claimant claims a lien against an article under Part I (Possessory Liens) and refuses to surrender possession of the article to its owner or any other person entitled to it and where one of the circumstances described in subsection (1.2) exists, the owner or other person lawfully entitled to the article may apply to the court in accordance with the procedure set out in this section to have the dispute resolved and the article returned.

- (1.1) Where a claimant claims a lien against an article under Part II (Non-Possessory Liens), where the person who has possession of the article refuses to surrender it to its owner or any other person entitled to it and where one of the circumstances described in subsection (1.2) exists, the owner or

other person lawfully entitled to the article may apply to the court in accordance with the procedure set out in this section to have the dispute resolved and the article returned.

- (1.2) Subsection (1) or (1.1) applies if there is,
 - (a) a dispute concerning the amount of the lien of the lien claimant including any question relating to the quality of the repair, storage or storage and repair;
 - (b) in the case of a repair, a dispute concerning the amount of work that was authorized to be made to the article; or
 - (c) a dispute concerning the right of the lien claimant to retain possession of the article.
- (2) The application shall name, as the respondents, the lien claimant and, in the case of a non-possessory lien, the person who has possession of the article.
- (3) The application shall be in the required form and may include an offer of settlement.
- (4) The applicant shall pay into court, or deposit security with the court in the amount of, the full amount claimed by the respondent but where the applicant includes an offer of settlement in the application, the applicant shall pay into court the amount offered in settlement and shall pay into court, or deposit security with the court for, the balance of the full amount claimed by the respondent and payments and deposits under this subsection shall be made to the credit of the application.
- (5) Where money is paid into court or a deposit is made with the court under subsection (4), the clerk or registrar of the court shall issue an initial certificate in the required form and under the seal of the court stating that the amount indicated therein, or security therefor, has been paid into or posted with the court to the credit of the application, and where applicable, indicating the portion of that amount that is offered in settlement of the dispute.
- (6) The applicant shall give the initial certificate to the respondent who, within three days of receiving the initial certificate, shall release the article described therein to the applicant unless, within the three day period, the respondent files with the court a notice of objection in the required form.
- (7) Where an objection has been filed with the court, the applicant may pay into court or post security with the court, to the credit of the application, the additional amount claimed as owing in the objection, and where the additional amount has been paid into court or the additional security has been posted, the clerk or registrar shall issue a final certificate in the required form and under the seal of the court.
- (8) The applicant shall give the final certificate to the respondent who, upon receiving the final certificate, shall release immediately the article described therein.
- (9) Where the respondent does not release the article as required, the applicant may obtain from the clerk or registrar of the court, without notice to the respondent, a writ of seizure directing the sheriff or bailiff to seize the article and, upon receipt of the writ, the sheriff or bailiff shall seize the article and return it to the applicant.
- (10) Before obtaining a writ of seizure, the applicant shall file an affidavit with the clerk or registrar of the court confirming that the respondent has not released the article as required.
- (11) Where the respondent releases the article to the applicant in compliance with an initial or final certificate, or where the article is seized by a sheriff or bailiff under a writ of seizure, the respondent may demand a receipt in the required form to this effect, and upon presentation of the receipt to the clerk or registrar of the court and signing a waiver of further claim in the required form, the respondent shall be paid the portion of the amount paid into court that was offered in settlement of the dispute.
- (12) Where the respondent accepts the amount offered in settlement of the dispute, the clerk or registrar of the court shall notify the applicant and upon request shall return to the applicant the balance of the amount deposited into court and deliver up any security deposited by the applicant for cancellation.
- (13) Where the article is released to the applicant by the respondent or is seized by the sheriff or bailiff under subsection (9), the lien is discharged as a right against the article and becomes instead a charge

upon the amount paid into court or the security posted with the court, and where the respondent seeks to recover the full amount claimed by the respondent to be owing, the respondent may commence an action to recover that amount.

- (14) The charge upon the money paid into court or the security posted with the court is discharged ninety days after the article was returned to the applicant or seized unless, before the end of the ninety days, the respondent has accepted the applicant's offer of settlement or has commenced an action to recover the amount claimed.
- (15) Upon the expiry of the ninety days referred to in subsection (14), the clerk or registrar of the court may return to the applicant the money paid into court and deliver up for cancellation any security posted with the court if the applicant files with the clerk or registrar an affidavit confirming that the respondent has neither accepted an offer of settlement nor commenced an action to recover the money claimed.
- (16) The respondent is liable for the costs of enforcing a writ of seizure and these costs shall be set off against the amount paid into court under this section.

25. An application under this Part may be brought in any court of appropriate monetary jurisdiction.

28. (1) Where an article that is subject to a lien is in the lien claimant's possession, the lien claimant,

- (a) shall use reasonable care in the custody and preservation of the article, unless a higher standard of care is imposed by law; and
- (b) unless otherwise agreed,
- (i) shall keep the article identifiable, and
- (ii) may create a security interest under the *Personal Property Security Act* in the article, but only upon terms that do not impair a right of redemption under that Act or this Act.
- (2) Unless otherwise agreed, a lien claimant is entitled to recover the commercially reasonable expenses incurred in the custody, preservation and preparation for sale of an article that is subject to a lien, including the cost of insurance and the payment of taxes or other charges incurred therefor, and the expenses are chargeable to and secured by the article and may be included by the lien claimant in determining the amount required to satisfy the lien.