

by Heather A. Llewellyn, executive director, Tow and Recovery Alliance of Canada (TRAC)



The Nightmares of Police Towing

The Roadside Responders Association is trying to solve the problems, but it cannot do this without unified support from towers.

“How can a police department enter into a contract with a towing company if the police department has no intention of paying for any of the costs involved?”

The Roadside Responders Association (RRA) in Nova Scotia has a couple of priority issues on its desk. The first has to do with government administrative procedures for dealing with property detained in the custody of the law. The second is the mistreatment the towing industry receives from authorities when doing work for the police. On both issues, the RRA is taking a stand against unfair practices that have caused substantial harm to the towing industry in

the past and will lead to economic instability in the future.

The RRA has raised a number of concerns with all three levels of government. Since the middle of last year, the RRA's efforts to bring these matters to light have stalled the renewal of every municipal towing and storage tender in the province. The RRA's complaints have included breach of government procurement and trade policies, breach of duty and good faith, misuse and misinterpretation of laws, unfair business practices, abuse of authority, unwarranted interference in commerce, and discriminatory practices.

The Illusory Lien

A major element in the RRA's complaints is what the association believes to be a misinterpretation of the law regarding liens on vehicles which have been seized by police. They believe this misinterpretation is not in the best interest of the public and exposes

tow operators to significant harm. Specifically, they dispute the understanding that an impound operator has an enforceable lien if the detention is in dispute or the vehicle has been left abandoned.

Police departments in Nova Scotia operate with the understanding that when they seize or remove a vehicle from a roadway, a “third party” to the contract (that is, the owner or operator of the vehicle) is responsible to pay the towing and storage company if the vehicle is left unclaimed. This includes situations when the vehicle has been involved in a traffic accident, when the driver of the vehicle has been charged with an offence, and when the vehicle has been removed from private property.

A good example of this is a police department that recently put its towing and storage contract up for tender. The tender request specified that a third party (the vehicle

owner or operator) would be responsible for the towing and impoundment costs and the police department would not be. The tender further specified that when an impound operator puts an unclaimed vehicle up for sale, the sale must be advertised in accordance with the Warehousemen's Lien Act (WLA).

In Nova Scotia, a towing company's entitlement to a lien on a vehicle it has towed and stored at the request of a police officer arises from the Motor Vehicle Act (MVA). The MVA does indeed set out a legal procedure for the sale and disposition of unclaimed vehicles. However, the RRA argues that the MVA does not give a municipality, a police officer, or the Crown the authority to tell a towing company that it can dispose of an unclaimed vehicle under the WLA. This is because the WLA does not allow a lien claim where the storage arrangement was made by a "third party" such as a police officer.

"The RRA's efforts have stalled the renewal of every municipal towing and storage tender in the province."

It is often asked how a police department can enter into a contract with a towing company if the police department has no intention of paying for any of the costs involved. First, the police can contract towing services because the relevant statutes give the police the right to remove traffic violators and obstructing vehicles from Nova Scotia roadways, and the same statutes make the vehicle owners and operators liable to the Crown for the costs of removing such vehicles. The Crown also has a responsibility to make sure the fees charged are reasonable; therefore, the Crown must be able to demonstrate that it has used proper procurement policies to obtain the best price.

However, there is also a well-established rule of law that a contract cannot be enforced on any person who has not been a party to the contract. This is why the RRA says the police are not acting in good faith when their contracts with impound operators insist that impound operators must collect fees for abandoned

vehicles from "third parties" (the vehicle owners) when the law clearly does not allow impound operators to do this.

Under the MVA and the Public Highways Act (PHA), the Minister of Transportation and Infrastructure Renewal is responsible for overseeing enforcement of the Acts, including the safety and maintenance of the roadways. Both statutes grant municipal traffic divisions responsibility for enforcing the statutes within a municipality, while the province and municipality share responsibility for enforcing the statutes on provincial highways.

The PHA requires the Minister of Transportation and Infrastructure Renewal to establish a fund to pay for all work performed under the Act. The PHA further states that the cost to seize and remove a vehicle that has been involved in an offense or that is obstructing a road, highway, or water drain may be recovered by the Minister from the vehicle owner.

Under the MVA, when a vehicle is taken into custody by a police officer, the Crown has a lien for the cost of the seizure, and an impound operator has a lien for its towing and storage costs. The liens secure the Crown's right to hold or sell a vehicle if the owner defaults on paying the costs associated with the seizure, removal, and storage.

When a vehicle owner has not paid what he or she owes to the Crown, and the vehicle remains in the Crown's custody, the Crown can suspend the vehicle's registration and authorize its sale. The Crown can conduct its own sale, or it can authorize the impound operator to sell the vehicle on the Crown's behalf. Regardless of which procedure the Crown uses, the last registered owner of the vehicle is accountable to the Crown for any debt resulting from the seizure of the vehicle. When the vehicle is sold, the proceeds are to be used to pay the costs of the seizure, towing, and storage; any remaining money will be held by the Crown to be claimed by the owner.

This procedure shows that the Crown is the only party that has a secured debt and that can demand payment for the costs for a vehicle that has been abandoned at an impound yard. The lien that is given to the impound operator allows the impound operator the right to collect payment for towing and storage when the owner is willing to pay or to sell the vehicle

when the owner is not willing to pay—but only on behalf of the Crown.

This contradicts what impound operators in Nova Scotia are told regarding detained vehicles. Authorities tell impound operators, "We are not responsible for 'third party' invoices." Operators are then abruptly told not to invoice the police department but to keep the vehicle for 90 days and then do what they want with it. In the majority of situations, the authorities take no further responsibility or action. They basically dump the problem onto the tow operator and run. Operators who consider submitting invoices to the government are threatened with the loss of future business.

"Police transfer possession to the impound operator, making the impound operator accountable for their negligence."

The RRA believes the impound operators' right to be paid has been well established by legal precedent, and the Crown is required under the relevant legislation to pay impound operators' expenses.

Proper Procedures

A related RRA complaint is that the police have failed to establish proper administrative procedures when there is a dispute in law between the vehicle owner and the Crown. In situations like this, the RRA argues that police departments should advise impound operators to send an invoice for towing and storage to the police department, so the police department can go to court to enforce the Crown's lien on the vehicle.

Instead of developing proper procedures, when a dispute arises, police departments have been known to shift liability to the impound operator. They will release the police hold on a vehicle, advising the impound operator that the vehicle owner is responsible for the towing and impound costs. In some cases, this has been done just before a trial. If the court rules that the police had no legal right to take possession of the vehicle, the police can claim that they have transferred

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possession to the impound operator, making the impound operator accountable for their negligence.

For example, a vehicle was seized by an Ontario police department, and the driver was charged with DUI and criminal negligence. When the case went to trial two years later, the court ruled that the police had no legal grounds for seizing the vehicle, and that it should be released to the owner. After the trial, a police officer advised the impound operator to release the vehicle, but added that the owner would be responsible for paying the impound operator's fees. When the vehicle owner went to claim his property, the impound operator refused to release it, claiming a lien under Ontario's HTA and RSLA legislation. The vehicle owner refused to pay and sued the police department for the return of his vehicle. Unaware of the lawsuit, the impound operator proceeded to sell the vehicle under the RSLA. The court refused to hear the lawsuit, saying the vehicle owner should sue the impound operator since the police department had removed its hold and the Crown was no longer in control of the property at the time the vehicle was sold.

“How do towers become so entwined in these legal arguments and end up looking like idiots?”

In a case in British Columbia, police charges against a vehicle owner were dismissed on appeal because the police had made an error in law. The impound operator refused to release the vehicle, claiming a lien for the towing and storage costs. When he sued, a court ruled that the vehicle owner could not be held liable for the towing and storage costs since the police were responsible for the error. However, the impound operator was under contract to “not charge” the police department for “third party” towing and storage. Not only was the towing company not paid for its work but it was also required by the court to pay the other parties' legal costs.

In another case in B.C., when a motorist was unable to produce a driver's licence, a police officer impounded the vehicle. A week later, the owner produced an Alberta licence

and disputed the detention of his vehicle. The B.C. legislation imposed a lien, stating that an impounded vehicle cannot be released until all the towing and storage expenses are paid. The Act further states that after 30 days, with the approval of the Superintendent of Motor Vehicles, the vehicle can be sold.

Because the case could not be heard quickly, it was likely that the impound costs would have soon been higher than the value of the vehicle. The judge decided that common sense should prevail. Since the Judicial Review Procedures Act allows a court to make an interim order, he ordered the Superintendent of Motor Vehicles to immediately pay the impound operator for the cost of the impoundment. He further ordered the impound operator to release the vehicle to the owner. However, the Superintendent of Motor Vehicles would be entitled to seek reimbursement of the costs from the accused if the Crown was successful in its court case.

So how do towers become so entwined in these legal arguments and end up looking like idiots in the courtroom? It is because the police tell towers that “third parties” are liable to pay them when in fact they are only liable to the Crown. It is because towers usually have no knowledge of what is transpiring between a vehicle owner and the police or the Crown. And it is because police departments do not apply common sense to release vehicles when the seizure is in dispute.

Administrative Fees

A recent call for tender by Cape Breton Regional Police Services stated that the successful bidder may be required from time to time to place trucks at locations designated by the chief of police during specified hours. The tender does not allow the bidder to quote on the times the truck is sitting if they do not get a call or if the call is cancelled. It does not allow the bidder to charge for the cost to auction an unclaimed vehicle. It only assumes the bidder will receive business by having a truck sit at designated times, and that all services will be paid for by a third party. The tender requires that the bidder charge the same winching and storage rates for a large commercial vehicle as a passenger vehicle, and it demands that the first 24 hours of storage be provided at no charge.

In addition, the department demands

an administrative fee of twenty-five dollars for every call the municipality dispatches to its contractors. This is another policy the RRA disputes, arguing that the municipality and police have no jurisdictional authority to impose the fee, the policy is discriminatory, and the RRA feels that the public should not be penalized or required to pay additional fees above what they are taxed on. The RRA also claims that if the municipality is going to charge the fee and a vehicle remains unclaimed, the fee should be paid back to the contractor, in addition to the Crown paying the towing and storage expenses.

“Until we collectively take action, we will continue to be a laughing stock.”

In response to a news release by the RRA, the police department refused to comment. However the municipality's chief financial advisor claimed the fee covers an administrative task that the police took on for a number of reasons—one being that it allowed them to better manage accident scenes. She claimed that before towing tenders were in place, multiple towing companies would often show up to accident scenes, making it difficult for police to manage the scene.

What is striking is the unfairness of it all. Contracting towing companies are barely clinging to life as a result of not being paid a reasonable fee for their services. There is discrimination because if members of the public call a contracted tow truck, they must pay the twenty-five dollar fee; however, if the police call a non-contracted truck, the fee is not applicable. There is further discrimination because the fee is charged to contracted companies, but not to non-contracted companies that have been dispatched due to an owner's request. Above all, the fees are charged to contractors who have just been bullied into accepting the government's liability for road maintenance and vehicle enforcement costs.

Who's to Blame?

While this article appears to attach blame to the police, it is important to understand how we arrived where we are today. The towing industry is just as much to blame because we

are always worried about new arrivals in the industry, keeping ahead of the competition, and securing work, instead of uniting with our competition with the common goal of resolving these issues. As an industry, we have failed to employ legal representation to prevent these practices from continuing. We have opened the gate to allow more and more people without proper knowledge, equipment, or management skills to invade our industry, leaving professional operators at a huge disadvantage. And we have allowed police to continue to exercise abusive powers.

The towing industry is always discussing

its problems with abandoned vehicles, and we are always looking for recommendations we can make to government to deal with the issue. The fact of the matter is that the Crown's problem with abandoned vehicles is not our problem to solve. Vehicle owners are not obligated to pay us. They are obligated to pay the Crown, and the Crown is obligated to pay us. We should collectively stop allowing ourselves to be intimidated, stop selling abandoned vehicles we have no right to sell, start submitting invoices to government, and start requesting payment for the services we provide. Until we collectively take action, we

will continue to be a laughing stock.

The RRA has been presenting its case to government, and we are making progress. If we are successful, our efforts will increase the profits of all industry participants. In order to be able to continue fighting this battle, we are asking all Nova Scotia towing companies to help fund this cause. Contributions can be made by downloading the donation form at rratowing.ca or by mailing a cheque to the RRA at 30 Farnham Gate Road, PO Box 51009, Halifax, NS B3M 4R8. Together we can make a difference and gain respect and the right to be paid. 🍁

JOIN US! A message from TRAC



Heather Llewellyn,
Executive Director, TRAC

Randy Sorley, president of the Towing and Recovery Alliance of Canada (TRAC), Canada's national towing and recovery association, has announced that Heather Llewellyn has been hired to serve as the association's executive director.

Heather will be tasked to support the board in transitioning TRAC into a more strategic-oriented organization that meets the evolving needs of the industry.

The Towing and Recovery Alliance of Canada (TRAC) was formed in 1998, by seven provincial towing organizations. Now, TRAC is expanding its impact by inviting towing companies from across Canada to become members.

Maybe you are in a province that has no towing association. You have seen the need for towers to work together, but you have had no opportunity to do that. Maybe you live in a province that has a provincial towing association but, for whatever reason, you

have never joined that organization. Maybe you live in a province that has a provincial towing association, you have been a contributing member for years, and you know how valuable it is.

Regardless of your previous exposure and experience to towing associations, we invite you to become a member of TRAC. TRAC and its new initiative have the full support of the provincial towing associations.

Why two levels of association? Simply put, there are some issues that are strictly provincial—such as dealing with provincial laws and provincially-based insurance companies—but there are also some national issues. Towers need a national voice on these issues.

Provincial towing organizations will continue working in their own jurisdictions, but overlapping issues and activities will be handled nationally. TRAC will become an important source of information about towing and recovery in Canada. TRAC is also committed to becoming an energetic and effective voice for the towing and recovery industry.

The leaders of TRAC have determined that they will initially focus on three issues:

1. slow down and move over laws in all provinces
2. the Alberta government requirement that towers must be licensed to possess automobile lock bypass tools in accordance with the Criminal Code of Canada
3. the problems with abandoned vehicles which towers are facing all across Canada

The leaders of TRAC have deliberately chosen to keep the membership fee low—only \$100 per year per towing company (or per location for larger companies with more than one location). That is not a lot of money. It is far less than what the consequences of any one of the three issues outlined above could cost a towing company in a year.

What TRAC is asking from each towing company is not a lot. But, if the thousands of towing and recovery companies across Canada all agree to do their part, together we will create a powerful organization that will make our voice heard in government.

JOIN US. Your future depends on it.

It is time for the towing and recovery industry to get on TRAC!

Please request a membership application by emailing towingandrecoveryalliance@hotmail.com