Executive Overview
Managing Abandoned Boats

Members of boating clubs may on occasion choose to leave a derelict boat on the club property and refuse to move the boat. The boat may not be derelict in the sense that it has sunk at its berth due to disrepair, but it may be derelict in the sense that the cost of repair or maintenance may be so high in light of the value of the boat that the member does not wish to spend any money including for the cost of removal and disposal of the boat (which cost may be quite considerable). The personal finances of the member may also be a factor.

Winter storage services may be provided by a club and the decision of a member to leave the boat behind may occur when storage services are over, and Spring has arrived. It's quite likely that when a member leaves a boat at the club, the member will stop paying membership fees and terminate involvement with the club.

The situation is an awkward one for the club because, while it has possession of the boat, the club is not the owner of it. Indeed, it's possible that the boat is not owned by the club member per se, and even if the boat is in fact owned by the club member, the member may have granted a lien, mortgage, or other security interest to a third party such as a financier. In other words, the club member may not be the only person who has a legal interest in the boat, and if the club takes steps to deal with the boat, it may affect all persons with an interest in the boat.

Ontario law provides "self-help" remedies for persons who, for example, loan money and take security in a car (or another item). A bank may repossess and sell a car where it has loaned money on the security of the car and the loan goes into default. It's a self-help remedy because the bank may repossess and sell a car owned by a borrower without a court order. The bank's security interest must be registered under the *Personal Property Security Act* (Ontario) (PPSA) in order to fully protect the bank's interests. The PPSA contains many requirements that must be met for a bank to use this self-help remedy lawfully and to shield the bank from a claim by the owner of the car (and other financiers who may have a security interest in the car).

The self-help remedy of repossession and sale is ultimately a last resort for a bank – a bank is always hopeful that the fear the bank may repossess the borrower's car will ultimately make loan repayment the first priority of the borrower. As a practical matter, repossession and sale may not result in sufficient proceeds for the loan to be repaid and for the bank's costs to be reimbursed so it is viewed as a "last resort".

Ontario law, under the *Repair and Storage Liens Act* (RSLA), grants to storers of items a self-help remedy for unpaid "storage charges". Because the item is in fact in the possession of the storer (unlike the case of a car loan where the borrower possesses the car), the storer does not need to repossess (in fact, the RSLA calls it a "possessory lien" in favour of the storer).

When a bank takes security in a car, it must register a security interest on the public record at the time of the loan under the PPSA in order to make its security interest most effective. On the other hand, a storer who has a possessory lien does not need to register a security interest.

The RSLA is a tool that clubs, together with advice from their legal advisers, may consider with respect to derelict boats. A "storer" under the RSLA is a person (such as a club) who receives an article (such as a boat) for storage (or storage and repair) on the understanding that the person will be paid for the storage (or storage and repair). The storer has a possessory lien against the article for the amount agreed upon for the storage (or storage and repair). The storer has self-help remedies under its possessory lien if the storage charges are not paid including the right to refuse to give up possession of the article if storage charges are unpaid and to sell the article that is subject to the lien.

Because the RSLA contains several rules that must be followed regarding self-help remedies (such as giving a written notice to all third parties who have registered a security interest under the PPSA) and various legal matters should be considered before a self-help remedy is pursued. Clubs should obtain legal advice before exercising self-help remedies in order to ensure that they are protected from any claim by the boat owner and third parties such as financiers who may have an interest in the boat.

The RSLA also covers repair services which include services for the purpose of maintaining the condition of an article, and therefore it is possible that fees for winterization services performed by a club could be added to the amount subject to the possessory lien.

Of course, clubs differ with respect to their practices for fees payable by members. A club may not be able to hold possessory liens under the SLRA under its current practices because the club does not have agreements with members to charge storage (or repair and storage) fees to members; however, a club could consider changing its practices so that annual membership agreements with members specifically highlight storage fees to trigger the SLRA. Additionally, clubs could design agreements to include details on higher fees for storage should a boat continued to be stored past the date of the end of the storage period to incentivize the pick-up of the boat with payment due immediately.

For example, an agreement with a member might provide in principle:

- If the club determines that a boat is derelict, the club may give written notice to the owner of two options: (i) remove the boat within 30 days, or (ii) keep the boat at the club and pay for storage that will be charged after the 30-day period expires.
- The point could be extended to the situation where an owner does not take the boat out of winter storage and leaves it on land. Other options to trigger storage and repair charges could also be explored.
- If the owner does not respond to the notice in the 30-day period, the owner will be considered to have elected to pay the storage and repair charges specified in the agreement.
- The owner acknowledges that the storage and repair charges will create a lien in favour of the club against the boat (including its contents and any trailer) under the RSLA.
- If the owner fails to pay storage and repair charges when due, the club may pursue all of its legal rights and remedies including without limitation pursuing outstanding storage and repair charges in court and proceeding with the self-help rights and remedies under the RSLA.

As noted above, self-help remedies are a last resort. The best result is if the boat owner removes the boat. If storage and repair charges are hefty and pile up quickly (for example, storage charges could be charged per day), the boat owner will be incented to pick up the boat. As also noted above, the prospect of a lien in favour of the club may also incent an owner to remove a boat.

A club should in any event consult with legal counsel with respect to the club's current practices and changes, if any, that need to be made to them to improve the club's position regarding derelict boats.

Resources Related to Physically Removing Abandoned Boats:
Boating Ontario - Information webpage on proper ways to recycle/dispose of abandoned boats - https://www.boatingontario.ca/cpages/abandonedboats

Federal Government Abandoned Boat Program
https://tc.canada.ca/en/programs/funding-programs/abandoned-boats-program