

# The legality of 'towing-away'

Many questions have been raised about the legality of the 'towing-away' procedure instituted this year by the university in concert with York Town Towing. While this issue is by no means clear, below is the opinion of Ronald Lieberman, a third year student at Osgoode Hall Law School.

## The Trespasser

Let us consider, first, the case of a person who is not a student of the university and who does not have a parking sticker. If such a person leaves his car on campus without the permission of the appropriate authorities, he is, in effect, trespassing. The university becomes an involuntary bailee of his automobile.

An involuntary bailee has certain rights and obligations. The latter includes a duty to exercise some amount of care in preserving the subject matter of the bailment. In other words, the university could not legally demolish the car nor could they leave it in the middle of Finch Avenue. Furthermore when the owner comes to claim the car, the university must return it to him.

On the other hand, if the university wishes, it may move the vehicle or have someone else move it. The new location should, however, be a place of reasonable accessibility and safety. The university may then charge the operator of the vehicle any reasonable transportation cost. In the case of towing a car, \$10 is considered a reasonable charge. It should be noted that only the university may claim this expense and they may not hold the car for ransom until they get it.

If York Town Towing, acting upon a request from the university, removes a vehicle from university grounds to its own pound, then the towing company may charge the university for its services — but not the car operator or owner. He is only liable to the university for having committed a trespass which has cost the university \$10 to correct.

Bearing the above in mind, let us consider the situation where the university has called York Town Towing and the latter has removed the trespassing car to its pound. The car's owner shows up at York Town Towing and asks for his car. The reply is: 'Pay us \$12; \$10 for towing, \$2 for storage — and sign this release form'.

In effect, the above is the same as if A takes B's book and then demands \$2 or whatever, before he will return it. York Town Towing has no right to retain someone else's property. If they do so, they may be guilty of theft.

## Howson Case

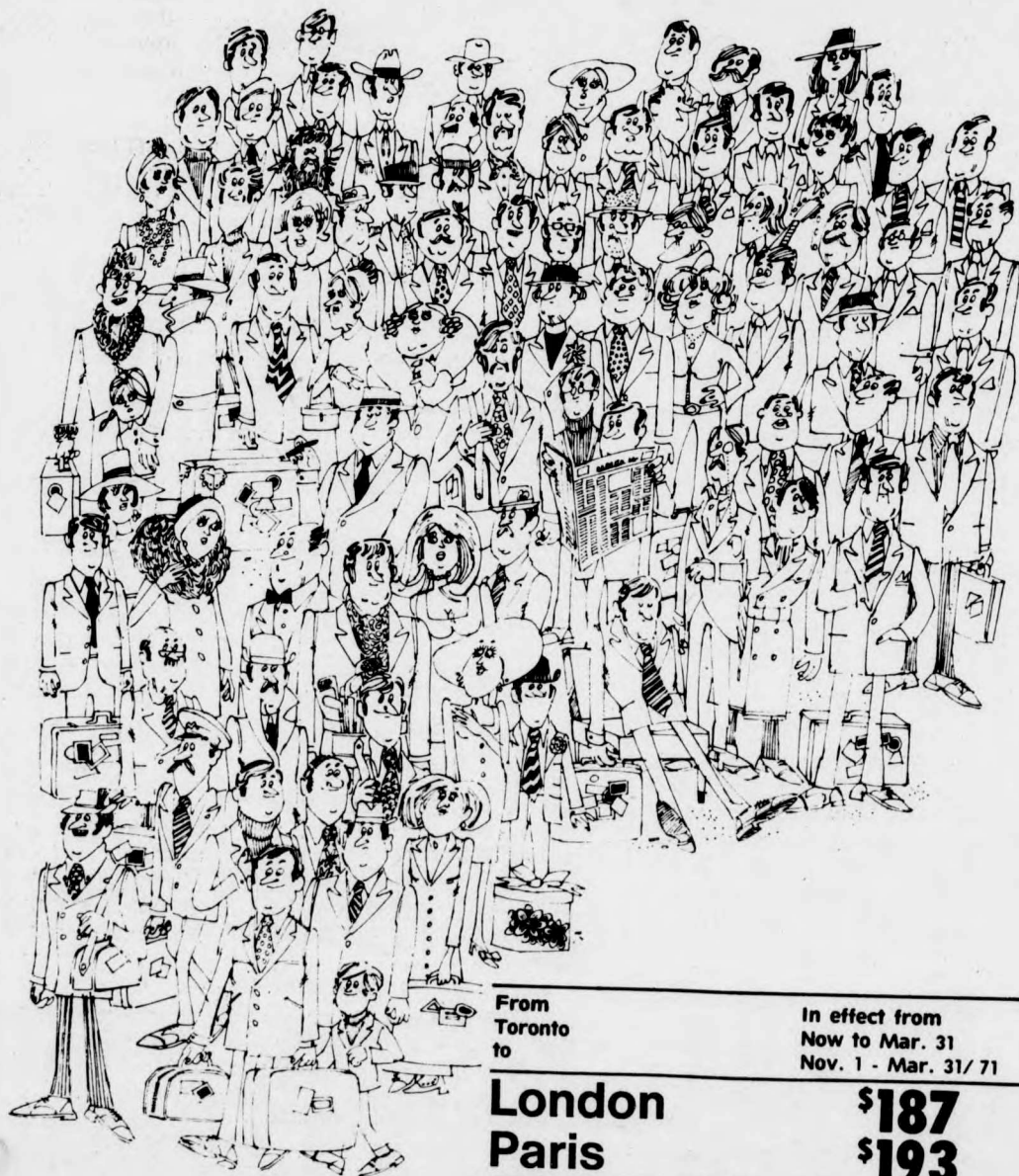
One such case did come before the Ontario Appeal Court — *Regina vs Howson* (1966) 25D.L.R. (2d) 582.

In this instance, a person had parked his car on a private lot without the permission of the owner of the lot. The lot's supervisor called a towing company who came and removed the car. The car's owner demanded its return from the towing firm. The latter refused to surrender the vehicle until towing and storage charges were paid. The car owner paid the amount demanded under protest, recovered his car and laid an information charging the accused, the employee of the towing company who had effected the removal, with theft.

The relevant section of the Criminal Code reads: "269. (1) Every one commits theft who fraudulently and without color of right takes, or fraudulently and without color of right converts to his use or the use of another person, anything whether animate or inanimate, with intent,

- (a) to deprive, temporarily or absolutely, the owner of it or a person who has a special property or interest in it, of the thing or of his property or interest in it,
- (b) to pledge it or deposit it as security,
- (c) to part with it under a condition with

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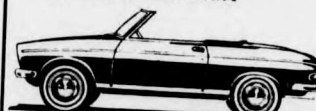
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