

Neighbourhood Support New Zealand



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Neighbourhood Support Fact Sheet

Illegal parking and car towing

A consumer parked his car in a supermarket car park for longer than the period allowed. When he returned he found his car had been towed away. Signs placed around the car park alerted him to which firm had towed the car. He arrived at the storage yard and located his car. He argued with the firm's employee as to their right to hold his property as security for the \$100 tow fee. He claimed that as he hadn't hired the tow firm, he had no obligation to pay the tow fee. Did the firm have a legal right to refuse to release his car to him?

The ability of a landowner to "impound" property of a person who has trespassed onto their land arises from the ancient remedy of "distress damage feasant". This remedy developed as a result of problems in rural English communities where one farmer's cows roamed onto another's pasture or crops and destroyed them. The farmer suffering the damage could "impound" the cows and keep possession until he was paid for the damage that they had caused. This old "common law" remedy was used by the High Court in the 1983 case of *Jamieson's Tow and Salvage v Murray*. In this case Mr Murray had parked his car on private land in central city Wellington. The landowner instructed Jamieson's to remove the car, but before it could be towed, Mr Murray returned. He offered to pay the tow fee rather than have the car towed. Jamieson's insisted on immediate payment or some form of security. Mr Murray refused and hopped into the car, putting both the hand brake and the foot brake on. The brake bleeding screws were removed rendering the brakes useless. The car was then towed to Jamieson's storage yard with Mr Murray still sitting in it. Mr Murray sued for "conversion" of his car, seeking exemplary damages and claiming the tow firm had no right to take his car. Both the District Court and the High Court agreed with him, holding that the firm had no right to take the car once it was in his possession and control.

Justice Quilliam discussed the ancient remedy of "distress damage feasant" in the course of his finding and noted that the cost of removing an unlawfully parked car, could nowadays be regarded as actual damage, which would justify retention of the car by the tow firm as security for payment. The English Court of Appeal took a different approach in the 1997 case of *Arthur v Anker*. The judges in this case held that a driver who parks a car without authorisation on private land upon which signs are displayed warning that unauthorised vehicles would be towed away, "impliedly consented to the risk of wheel clamping or being towed away and could not refuse to pay the release fee". The landowner would be liable for the cost of towing the car from his property and could therefore argue both "distress damage feasant" and damages for breach of the implied contract.

There is the further problem of exactly what level of damage can reasonably be claimed. In this instance the amount claimed was \$100. Clearly there must be some limit on what can be claimed. This issue can be challenged in the Disputes Tribunal if car owners feel they have been required to pay over the odds for the release of their car.

Currently, if a car is impounded under the provisions of the **Land Transport Act 1998** PART 7 - DISQUALIFICATION, DEMERIT POINTS, LICENCE SUSPENSION, AND VEHICLE IMPOUNDMENT, the Land Transport (Storage and Towage Fees for Impounded Vehicles) Regulations 1999 apply. The recovery service operator or storage provider can charge \$47 or \$60 (vehicles over 3,500 kilograms \$100 or \$150). The fee depends on the time and day. A further fee, not exceeding \$3 for each additional kilometre or part of a kilometre that the vehicle is towed, can be charged for tows in excess of 10 kilometres. Additional storage fees are payable to the vehicle recovery service operator or storage provider.

A typical Council towage fee is \$40, but it could be much more, and is usually accompanied by an infringement fee with both amounts appearing on the infringement notice and payable to the issuing authority. In this instance, the owner can uplift his or her vehicle and does not pay the towage fee directly to the towage company.

[New Zealand legislation](#) can be located at this address under Statutes.