

**November 19, 2015**

**Hamilton, Ontario**

### **Supreme Court of Canada Rules Against 407 ETR**

A decision of the Supreme Court of Canada released on November 13, 2015, declares that 407 ETR cannot for the purposes of enforcing payment of outstanding tolls and other charges, deny renewal of vehicle permit stickers to individuals who have been discharged from bankruptcy.

The vehicle permit renewal denial remedy allows 407 ETR to cause the Registrar of Motor Vehicles to deny renewal of vehicle permit stickers required in order to drive anywhere in the province of Ontario.

407 ETR had used its vehicle permit renewal denial remedy even in the face of bankruptcy.

The matter was argued before the Ontario Court of Appeal in June, 2013. On December 19, 2013, the Ontario Court of Appeal found that the exercise of the vehicle permit renewal denial remedy by 407 ETR against bankrupts frustrates the “fresh start” principle of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-2 (“BIA”).

The Supreme Court of Canada dismissed the appeal of 407 ETR and found that section 22(4) of the *407 Act* is constitutionally inoperative to the extent that it is used to enforce a provable claim that has been discharged under the *Bankruptcy and Insolvency Act*.

This means that 407 ETR cannot use its vehicle permit renewal denial remedy against individuals who have been discharged from bankruptcy.

The matter is the subject of a proposed class action that was issued in the Ontario Superior Court of Justice in Toronto on April 27, 2012.

The plaintiffs, Michael Dow, Gwendolyn Mirron and Peter Teolis, brought the action on behalf of all persons who incurred tolls and/or additional charges to 407 ETR who subsequently filed an assignment in bankruptcy and/or a proposal or consumer proposal under the *BIA*, and who were later subject to the vehicle permit renewal denial remedy post-assignment in bankruptcy.

The class action claim has largely been on-hold pending the decision of the Supreme Court of Canada.

The Statement of Claim in the class action alleges that 407 ETR has unlawfully used its vehicle permit renewal denial remedy to coerce payment of claims provable in

bankruptcy which are subject to a stay of proceedings or which are otherwise compromised or released by operation of the *BIA*.

The class action claim is being pursued by Scarfone Hawkins <sup>LLP</sup> of Hamilton, a law firm with significant experience in handling class action claims on behalf of plaintiffs. Scarfone Hawkins appeared to advance the position of bankrupts before the Supreme Court of Canada hearing held on January 15, 2015.

The Supreme Court of Canada decision can be accessed at this link:

<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15623/index.do>