

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

STEPHANIE GRAHAM AND ANGELA MICELI

Plaintiffs

- and -

**IMPERIAL PARKING CANADA CORPORATION
carrying on business as IMPARK**

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992, S.O. 1992, c.6, as amended*

MOTION RECORD RE: CERTIFICATION

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**ONTARIO
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Court File No. CV-09-00379652-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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Plaintiffs

- and -

**IMPERIAL PARKING CANADA CORPORATION
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Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992, S.O. 1992, c.6, as amended*

NOTICE OF MOTION

The plaintiffs will make a motion to the Honourable Mr. Justice Paul Perell on a date and at a time to be set by him and/or the trial coordinator at the Court House, 361 University Avenue, Toronto, Ontario, M5G 2M2.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR ORDERS:

1. certifying this action as a class proceeding;
2. describing the "Class" as:

All persons who parked a vehicle or whose vehicle was parked at an Impark parking lot and who were charged and paid violation fees to Impark;

3. appointing the plaintiffs as representative plaintiffs for the class;

4. stating the nature of the claims asserted on behalf of the class;
5. stating the relief sought by the class;
6. that the within proceeding is certified as a class proceeding on the basis of the following common issues, or such amendments thereto or other common issues that this Honourable Court may permit:

Parking Agreements

- a) are parking agreements “consumer agreements” as defined in section 1 of the *Consumer Protection Act*, 2002, S.O. 2002, c.30, Schedule A (“*OCPA*”)?
- b) do parking agreements constitute “future performance agreements” as defined in section 1 of the *OCPA*?
- c) if so, does the potential payment obligation under parking agreements exceed \$50.00?
- d) do parking agreements contravene the requirements of section 5 of the *OCPA*?
- e) do parking agreements contravene the requirements of section 22 of the *OCPA*?
- f) do parking agreements contravene the requirements of sections 24 and 25 of Ontario Regulation 17/05 (“O. Reg. 17/05”) made pursuant to the *OCPA*?

- g) has Impark engaged in unfair practices in contravention of sections 14, 15 and 17 of the *OCPA*?
- h) are parking agreements rescinded pursuant to section 18 of the *OCPA*, or alternatively, are parking agreements not binding pursuant to section 93 of the *OCPA*?
- i) are class members entitled to relief from forfeiture in connection with parking agreements, pursuant to section 98 of the *Courts of Justice Act*, R.S.O. 1990 c. 43 as amended?

Violation Fees

- j) do violation fees constitute illegal charges and/or payments pursuant to section 98 of the *OCPA*?
- k) are violation fees penalties at common law?
- l) has Impark been unjustly enriched via funds received as violation fees?
- m) if so, have class members suffered a corresponding deprivation through such payment of violation fees?
- n) if so, is there a juristic reason for violation fees paid to be retained by Impark?
- o) are violation fees received by Impark held in trust for the benefit of class members?

Damages

- p) if parking agreements contravene the *OCPA* and/or its regulations, is Impark liable to class members for damages?
 - q) if so, in what amount?
 - r) if violation fees contravene the *OCPA* and/or are penalties, or if Impark has been unjustly enriched through receipt of violation fees, is it liable to class members for damages?
 - s) if so, in what amount?
 - t) does the conduct of Impark warrant imposition of punitive damages?
 - u) if so, in what amount?
 - v) if violation fees contravene the *OCPA* and/or are penalties, or if Impark has been unjustly enriched through receipt of violation fees, must Impark provide an accounting of all proceeds received through its collection of violation fees?
 - w) if violation fees contravene the *OCPA* and/or are penalties, or if Impark has been unjustly enriched through receipt of violation fees, should this Court impose a permanent injunction restraining Impark from collecting further violation fees?
7. setting the form and content of notice to the class ("Notice of Certification");

8. directing that notice be given to the class through a notice program including the following:
 - (a) a direct mailing to all class members as identified from the records of the defendant;
 - (b) publication of the Notice of Certification (3) three times in each of the Toronto Star, Toronto Sun, National Post and Globe and Mail (National Edition) newspapers of at least ¼ page in size;
 - (c) the plaintiffs posting the Notice of Certification on the website of class counsel at www.classactionlaw.ca;
 - (d) the plaintiffs providing the notice to any person who requests it ("Notice Program").
9. requiring the defendant to forthwith pay the costs of the Notice Program;
10. fixing the date by which members of the class may opt-out;
11. specifying that no member of the class may opt-out of this proceeding after the fixed date;
12. appointing Nicholas Mastroluisi, C.A. to receive any opt-out notices and directing him to report to the Court the names and the addresses of the persons who have opted-out within thirty (30) days after the date fixed for opting-out;
13. specifying that within 30 days after the expiration of the opt-out period, class counsel shall report to the Court regarding the class members who have opted out of this class proceeding;

14. costs of this motion on a substantial indemnity basis, including applicable taxes;
and
15. such further and other order as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. the *Class Proceedings Act, 1992*, S.O. 1992, ("CPA") including sections 1, 2, 5, 6, 8(1), 9, 17, 20, 21, 22, 24, 34(1);
2. the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended, including Rule 12;
3. the Court should certify this action as a class proceeding because:
 - a) the Statement of Claim discloses causes of action;
 - b) there is an identifiable class of two or more persons;
 - c) there are common issues raised in the Statement of Claim;
 - d) a class proceeding is the preferable procedure;
 - e) the plaintiffs fairly and adequately represent the interests of the class and have produced a workable plan for advancing the claims on behalf of the class, and;
 - f) the plaintiffs do not, on the common issues, have an interest in conflict with the interests of other members of the class.
4. the Notice Program is a reasonable method of notifying the Class;

5. it is reasonable that the defendant pays the full cost of the Notice Program; and,
6. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Stephanie Graham and exhibits, sworn January 6, 2010;
2. Affidavit of Angela Miceli and exhibits, sworn January 8, 2010;
3. Affidavit of Thomas Telfer and exhibits, sworn December 23, 2009;
4. Such further and other evidence as counsel may advise and this Honourable Court may permit.

January 14, 2010

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STEPHANIE GRAHAM et al.

Plaintiffs

-and- IMPERIAL PARKING CANADA CORPORATION, carrying on business as IMPARK Defendant

Court File No. CV-09-00379652-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO**

NOTICE OF MOTION

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Lawyers for the plaintiffs

Court File No. CV-09-00379652-00CP

**ONTARIO
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STEPHANIE GRAHAM AND ANGELA MICELI

Plaintiffs

- and -

**IMPERIAL PARKING CANADA CORPORATION
carrying on business as IMPARK**

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992, S.O. 1992, c.6, as amended

AFFIDAVIT OF STEPHANIE GRAHAM

I, **STEPHANIE GRAHAM**, of the Town of Ajax, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a plaintiff in this action and, as such, have personal knowledge of the facts set out in this affidavit, except where such facts are based upon information and belief, in which case I have stated the source of the information. I believe all that is set out in this affidavit to be true and accurate.

OVERVIEW

2. Impark owns and/or operates parking lots in Ontario. Impark charges persons to park vehicles on Impark lots. The charges are flat fees by the hour or part of an hour.

3. When a person enters onto an Impark parking lot and parks a vehicle, the person enters into a parking agreement with Impark either through purchase of a parking voucher from a mechanical dispenser or through purchase of a parking voucher from a parking lot attendant. The parking voucher is to be displayed on the vehicle dashboard. Some persons enter onto Impark parking lots without purchasing a parking voucher.
4. Parking vouchers contain very little information, identifying only the amount paid, parking time allowed, and that the voucher is to be displayed on the dashboard of the vehicle.
5. At the time a person enters into a parking agreement, he/she does not receive the parking agreement in a form in which it can be retained.
6. If a person overstays beyond the parking time purchased or fails to purchase and/or display a parking voucher, Impark charges a violation fee of approximately \$68.90.
7. Initial notification of this violation fee is by way of a violation notice left on the vehicle. A statement notice and/or collection notice are later sent to the vehicle owner by mail.

STATEMENT OF CLAIM

8. Attached as exhibit "A" is a copy of the Statement of Claim as issued in this matter. I believe that the allegations contained in the Statement of Claim are true and accurate.

MY PERSONAL SITUATION

9. On April 6, 2009, I entered onto an Impark parking lot at 20 York Street, Toronto and paid Impark a fee to park through a mechanical parking voucher dispenser. I received a parking voucher after making payment. The parking voucher contained very little information identifying only the amount paid, parking time allowed, and that the parking voucher had to be displayed on the dashboard of the vehicle. The parking voucher did not set out any violation fee amount if I overstayed at the lot. Attached as exhibit "B" is a copy of the parking voucher, number 39484616, purchased for \$7.25 at 09:51 allowing parking to 11:18.
10. I overstayed at the lot. Upon return to my vehicle, a violation notice on my vehicle notified me that I was being charged a violation fee of \$68.90 by Impark. I had overstayed approximately 80 minutes at the parking lot. Attached as exhibit "C" is a copy of the violation notice number 09E347280, which references the 11:18 expiry time on parking voucher number 39484616.
11. I have paid the violation fee demanded by Impark, but did so under protest reserving all my rights.

REPRESENTATIVE PLAINTIFF

12. I am prepared to serve as a representative plaintiff in this proposed class proceeding.

13. I believe that I will fairly and adequately represent the Class and that I do not have an interest in conflict with the interests of other Class Members in respect of the common issues or in any other respect.

14. I understand that the main steps involved in prosecuting this action, in the event that it is certified by this Honourable Court as a class proceeding would involve the following:
 - (a) the action is commenced by Statement of Claim which is served upon the defendants, which step has already been completed;

 - (b) a motion is then brought before the Court seeking certification of the action as a class proceeding, this affidavit being sworn in support of such motion;

 - (c) if the certification motion is successful, notice of the certification would be given to Class Members and Class Members would be given an opportunity to opt-out or remove themselves from the class action;

 - (d) discovery of documents would occur including preparation of an affidavit of documents and production of all relevant non-privileged documentation;

 - (e) examinations for discovery would be conducted and that would include an examination for discovery of me as representative plaintiff, as well as representatives of the defendant;

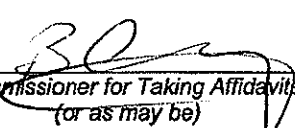
- (f) conduct of a pre-trial conference conducted before a Judge of this Court in order to explore the possibility of settlement, narrow issues for trial and otherwise focus the parties on the requirements for trial;
 - (g) a trial of the common issues;
 - (h) further notice to the Class if individual participation is required;
 - (i) distribution of judgment proceeds to Class Members, as directed by the Court, or distribution of settlement proceeds if the action is settled;
 - (j) there may be appeals from the certification order, from other Court orders or from the judgment at the common issues trial;
 - (k) a settlement could be reached at any stage, which settlement would require the approval of the Court in all respects.
15. I understand that in agreeing to seek and accept an appointment by the Court as a representative plaintiff, it is my responsibility to become familiar with the case and issues to be decided by the Court including:
- (a) reviewing the Statement of Claim;
 - (b) assisting in the preparation and execution of this affidavit filed in support of the motion for certification;
 - (c) to attend, if necessary, with my counsel for cross-examination on this affidavit;

- (d) to assist in preparation and execution of an affidavit of documents listing documents I have or have had;
 - (e) to attend with my counsel for examination for discovery;
 - (f) to attend with my counsel at the trial of the common issues and give evidence regarding the case, if required;
 - (g) to receive briefings from and to instruct my counsel;
 - (h) to express, in some circumstances, my opinions on strategy to my counsel;
 - (i) to express my opinion to counsel and to the Court if settlement positions are to be formulated;
 - (j) to express my opinion to counsel and to the Court if offers to settle are made;
 - (k) to assist in preparation and execution of an affidavit in support of any Court approval of a settlement reached;
 - (l) to communicate with Class Members as may be required.
16. I have retained and instructed Scarfone Hawkins ^{LLP} and Bates Barristers, participated in many discussions, assisted in the preparation of the Statement of Claim, aided in the drafting of this affidavit and have met with my counsel.

PLAN OF PROCEEDING

17. I understand from my counsel that a plan for prosecution of this proceeding is required to be filed with the Court. The proposed Plan of Proceeding is attached as exhibit "D". I do not have any expertise which permits me to evaluate the plan, however, I accept the plan as has been formulated by my counsel.
18. I make this affidavit in support of the relief requested in the notice of motion and for no other or improper purpose.

SWORN BEFORE ME at the
Toronto
Province of Ontario this 21st day
of January, 2010.



Commissioner for Taking Affidavits
(or as may be)



STEPHANIE GRAHAM

This is "Exhibit A" referred to in the Affidavit of Stephanie
Graham sworn January ...6....., 2010

A handwritten signature in black ink, appearing to be "BOA" with a stylized flourish extending to the right.

Commissioner for Taking Affidavits (or as may be)

CV-09-00379652-00CP 18

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

STEPHANIE GRAHAM AND ANGELA MICELI

Plaintiffs

- and -

**IMPERIAL PARKING CANADA CORPORATION
carrying on business as IMPARK**

Defendant

PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992, S.O. 1992, c.6, as amended

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO

PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date May ^{28th}, 2009 Issued by *A. Sinclair*
Local Registrar

Address of court office:
393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

TO: Imperial Parking Canada Corporation
601 West Cordova Street, Suite 300
Vancouver British Columbia
V6B 1G1

CLAIM

1. In this statement of claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) **"Angela"** means the plaintiff, Angela Miceli;
- (b) **"class members"** means all persons who parked a vehicle or whose vehicle was parked at an **Impark parking lot** and were charged and paid **violation fees** to Impark;
- (c) **"collection notice"** is a follow-up notice to a **statement notice** through which a collection agency on behalf of **Impark** demands payment of a **violation fee**;
- (d) **"CPA"** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (e) **"Impark"** means Imperial Parking Canada Corporation;
- (f) **"Impark parking lot"** means a parking lot in Ontario owned and/or operated by **Impark**;
- (g) **"OCPA"** means the *Consumer Protection Act, 2002*, S.O. 2002, c.30, Sch. A;
- (h) **"O.Reg 17/05"** means Ontario Regulation 17/05 made pursuant to the *OCPA*;
- (i) **"parking agreement"** means a contract entered into between a person and **Impark** for parking of a vehicle and use of a parking space at an **Impark parking lot**;
- (j) **"payment voucher"** is a document generated by **Impark** to be displayed on a vehicle dashboard when a person enters into a **parking agreement**;

- (k) **"Stephanie"** means the plaintiff, Stephanie Graham;
- (l) **"statement notice"** is a follow-up notice to a **violation notice** through which **Impark** demands payment of a **violation fee**.
- (m) **"violation fee"** means a monetary amount charged by **Impark** through a **violation notice**.
- (n) **"violation notice"** is the initial means by which **Impark** notifies a person that a **violation fee** is owed to **Impark**, in the following three scenarios:
 - (i) a person overstays at an **Impark parking lot** beyond the parking time allotted under a **parking agreement** through purchase of a **parking voucher**; or
 - (ii) a person fails to display an **Impark parking voucher**; or
 - (iii) a person parks a vehicle and fails to pay.

2. The plaintiffs claim:

- (a) an order pursuant to the *CPA* certifying this action as a class proceeding and appointing them as representative plaintiffs of the class members;
- (b) an order compelling a plan of distribution pursuant to sections 23, 24 and 25 of the *CPA*;
- (c) a declaration that parking agreements, and in particular, the violation fees are unenforceable and not binding on class members;
- (d) a declaration that parking agreements contravene the requirements of section 5 of the *OCPA*;

- (e) a declaration that parking agreements contravene the requirements of section 22 of the *OCPA*;
- (f) a declaration that parking agreements contravene the requirements of sections 24 and 25 of O. Reg. 17/05;
- (g) a declaration that the representations of Impark relating to parking agreements constitute unfair practices and contravene sections 14, 15 and 17 of the *OCPA*;
- (h) a declaration that parking agreements are rescinded pursuant to section 18 of the *OCPA*;
- (i) a declaration that parking agreements are not binding pursuant to section 93 of the *OCPA*;
- (j) a declaration that violation fees constitute illegal charges and payments pursuant to section 98 of the *OCPA*;
- (k) an interim order that upon receipt of this statement of claim, Impark preserve all of its documents, records, communications, files, and materials relating to entering into parking agreements, issuance of violation notices, statement notices and collection notices and collection of violation fees;
- (l) a declaration that violation fees collected by Impark are held in trust for the benefit of class members;
- (m) an accounting of all proceeds received by Impark through its collection of violation fees;
- (n) damages in the amount of \$50,000,000.00;
- (o) punitive and exemplary damages in the amount of \$5,000,000.00;

- (p) a permanent injunction restraining Impark from taking any further action in contravention of the *OCPA*;
- (q) pre-judgment and post-judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, RSO 1990, c.43 as amended;
- (r) costs of providing notice to class members and administration of damages pertaining to a plan of distribution;
- (s) costs of this action on a substantial indemnity basis; and
- (t) such further and other relief as to this Honourable Court may seem just.

THE NATURE OF THE ACTION

3. Impark owns and/or operates parking lots in Ontario. Impark charges persons to park vehicles on Impark lots. The charges are flat fees by the hour.

4. When a person enters onto an Impark parking lot and parks a vehicle, the person enters into a parking agreement with Impark either through purchase of a parking voucher from a mechanical dispenser or through purchase of a parking voucher from a parking lot attendant. The parking voucher is to be displayed on the vehicle dashboard. Other persons enter onto Impark parking lots without purchasing a parking voucher in advance.

5. Parking vouchers contain very little information, identifying only the amount paid, time allotted and that the voucher is to be displayed on the dashboard of the vehicle.

6. At the time a person enters into a parking agreement, he/she does not receive the parking agreement in a form in which it can be retained.

7. If a person overstays beyond the time purchased or fails to purchase and/or display a parking voucher, Impark charges a violation fee of approximately \$68.90.

8. Initial notification of this violation fee is by way of a violation notice left on the vehicle. A statement notice and/or collection notice are later sent to the vehicle owner by mail.

THE PARTIES

9. Stephanie is an individual resident in the Town of Ajax, Ontario.

10. Angela is an individual resident in the City of Toronto, Ontario.

11. Impark is a corporation incorporated pursuant to the laws of the Province of Nova Scotia, with its registered head office in Vancouver, British Columbia and carries on business throughout Canada. Impark is the third largest parking management company in North America. Impark has over 1,800 parking facilities and 425,000 parking spaces in Canada and the United States.

BACKGROUND INFORMATION

12. At Impark parking lots, persons enter into parking agreements either by purchasing a parking voucher from a mechanical dispenser, or by purchasing a voucher from a parking lot attendant. Persons may also enter into parking agreements by parking at Impark parking lots without purchasing a parking voucher.

13. Signage posted at Impark parking lots provides that space for public parking is available on the terms set out on the signs. At each lot, a rate is posted on a sign requiring persons to pay in advance the posted amount, based on an hourly flat rate. Other signage indicates that if persons do not display a valid parking voucher or park over the time limit, a violation fee of either \$68.90 or \$69.55 will be charged.

14. Parking vouchers provided at the time parking agreements are entered into contain very little information, identifying only the amount paid, time allotted and that the parking voucher must be displayed on the dashboard of the vehicle. Parking vouchers do not indicate the amount which may be charged by Impark if a person over-stays at the lot or does not display a voucher.

15. If a person stays at an Impark parking lot for a time which exceeds the time purchased pursuant to a parking voucher, or if a person fails to display a valid parking voucher, Impark charges a violation fee by way of a violation notice left on the vehicle, or by statement notice and/or collection notice subsequently delivered to the owner of the vehicle.

16. Violation notices are similar in appearance and nature to the tickets which are issued by municipal authorities for parking violation on municipal streets.

17. Violation notices typically require payment of \$68.90 if paid after 7 days, or \$38.59 if paid within 7 days of the issuance of the violation notice.

18. The back of the violation notice includes an "Explanation of Amount" which indicates that:

The amount on this notice is set to cover lost revenue as well as the costs of patrol and preliminary collection.

THE LEGAL AUTHORITY TO CLAIM THE AMOUNT DUE AND/OR HAVE IMPROPERLY PARKED VEHICLE TOWED ARISES UNDER THE LAW OF CONTRACT AND THE LAW OF TRESPASS.

The above amount is a debt owing to Imperial Parking Canada Corporation and is claimed as an alternative to (or in certain circumstances, in addition to) having your vehicle towed and held for any applicable towing and storage charges.

If this amount remains unpaid for more than thirty (30) days, it will be forwarded to a debt collection agency for collection. We may also tow your vehicle from property managed by us and/or take legal action. Should this charge proceed to a debt collection agency, costs and interest will be added.

19. If the violation fee is not paid, Impark conducts a search for the registered owner of the vehicle license plate, and the owner of the plate is mailed a statement notice demanding payment of the violation fee amount. The statement notice indicates that if the violation is not paid within 14 days from the date of the statement notice, the debt will be referred to a debt collection agency for collection, at which time costs and interest will be added. The statement notice indicates that:

The legal authority to claim the amount due and/or have improperly parked vehicle towed arises under the law of contract and the law of trespass. Our right to claim this amount from owners of vehicles improperly parked on facilities managed by us has been confirmed by a Canadian Federal Court of Appeal decision.

20. If the violation fee is not resolved, Impark assigns the parking debt to a collection agency.

STATED FACTS OF THE REPRESENTATIVE PLAINTIFFS

A) Stephanie

21. On April 6, 2009, Stephanie entered onto an Impark parking lot at 20 York Street, Toronto and paid Impark a fee to park through a mechanical parking voucher dispenser. Stephanie received a parking voucher after making payment. The parking voucher contained very little information identifying only the amount paid, time allotted and that the parking voucher must be displayed on the dashboard of the vehicle. The parking voucher did not set out any violation fee amount if Stephanie overstayed at the lot.

22. Stephanie overstayed at the lot. Upon return to her vehicle, a violation notice on her vehicle notified her that she was being charged a violation fee of \$68.90 by Impark. Stephanie had overstayed approximately one hour at the parking lot.

23. Stephanie will pay the violation fee demanded by Impark, but will do so under protest reserving all her rights.

B) Angela

24. On March 11, 2009 Angela's son, Joey Miceli, entered onto an Impark parking lot at 21 Four Seasons Place, Toronto and paid Impark a fee to park through a mechanical parking voucher dispenser. The daily maximum parking fee at the lot was \$5.00. Joey Miceli received a parking voucher after making payment. The parking voucher contained very little information identifying only the amount paid, time allotted and that the parking voucher must be displayed on the dashboard of the vehicle. The parking voucher did not set-out any violation fee amount if Joey Miceli overstayed at the lot.

25. Joey Miceli overstayed at the lot. Upon return to the vehicle, a violation notice on the vehicle notified him that a violation fee of \$68.90 was being charged by Impark. Joey Miceli had overstayed approximately 43 minutes at the parking lot.

26. Angela subsequently received from Impark a statement notice demanding payment of the violation fee. Angela received the statement notice as registered owner of the vehicle licence plate.

27. Angela has refused to make payment of the violation fee. Angela did not enter into a parking agreement with Impark, nor is she responsible for any conduct which caused the violation fee, the violation notice or the statement notice.

BREACHES OF THE OCPA

Consumer Agreement

28. Parking agreements constitute "consumer agreements" as defined in section 1 of the OCPA. Parking agreements are agreements between Impark and consumers in which Impark agrees to supply services for payment.

29. Sections 5 of the OCPA provides that where a supplier is required to disclose information as prescribed, the disclosure must be clear, comprehensible and

prominent, and delivered to a consumer in a form in which it can be retained by the consumer.

30. Impark fails to disclose required information to class members in respect of parking agreements in a clear, comprehensible and prominent fashion.

31. Impark fails to deliver relevant information in respect of parking agreements to class members in a form which can be retained them.

Unfair Practices of Impark

32. Section 14(1) and 17 of the *OCPA* state that "It is an unfair practice for a person to make a false, misleading or deceptive representation" and that "No person shall engage in an unfair practice".

33. Section 14 of the *OCPA* provides that a "false, misleading or deceptive representation" is a prohibited unfair practice, and without limiting the generality of the foregoing, provides the following examples of unfair practices, all of which have been contravened by Impark:

13. A representation that the transaction involves or does not involve rights, remedies or obligations if the representation is false, misleading or deceptive.

14. A representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.

...

16. A representation that misrepresents the purpose of any charge or proposed charge.

34. Sections 15 and 17 of the *OCPA* provide that "It is an unfair practice to make an unconscionable representation" and that "No person shall engage in an unfair practice".

35. The OCPA provides that a "unconscionable representation" is a prohibited unfair practice, and further provides under section 15 that:

15. (2) Without limiting the generality of what may be taken into account in determining whether a representation is unconscionable, there may be taken into account that the person making the representation or the person's employer or principal knows or ought to know,

...

(b) that the price grossly exceeds the price at which similar goods or services are readily available to like consumers;

...

(f) that the terms of the consumer transaction are so adverse to the consumer as to be inequitable;

(g) that a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment.

36. Impark representations with respect to parking agreements are false, misleading or deceptive and/or constitute unconscionable representations, particulars of which are as follows:

- (a) Impark fails to provide class members with an opportunity to consider whether they wish to risk imposition of a violation fee as a consequence of over-staying at a lot or through failure to display a parking voucher;
- (b) Impark misrepresents its legal authority to charge violation fees, deceives class members with reference to "law of trespass" on violation notices and reference to a Canadian Federal Court of Appeal decision on statement notices, said to authorize the imposition of violation fees;
- (c) Impark represents in violation notices, statement notices and collection notices that Impark will take legal action when the violation fees charged are not enforceable in law;

- (d) Impark issues violation notices in a form intended to communicate to class members that there is an underlying municipal or governmental authority which has legitimized the violation fees.

37. Section 18(1) of the *OCPA* provides that:

18. (1) Any agreement, whether written, oral or implied, entered into by a consumer after or while a person has engaged in an unfair practice may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law, including damages.

38. As a result of the unfair practices of Impark as described above, the plaintiffs and class members are entitled to rescission of parking agreements and are entitled to damages under section 18 of the *OCPA*.

Future Performance Agreement

39. Parking agreements constitute "future performance agreements" as defined in section 1 of the *OCPA*. Future performance agreements are agreements between Impark and class members in respect of which performance in full is not made when the parties enter into the parking agreement.

40. At the time parking agreements are entered into, Impark does not perform such agreements in full. Parking agreements are performed in full when class members leave an Impark parking lot.

41. Section 21 of the *OCPA* provides that sections 22-26 of the *OCPA* apply to future performance agreements if the total potential payment obligation under the agreement, excluding the cost of borrowing, exceeds \$50.00, as established by O.Reg 17/05.

42. Section 22 of the *OCPA* provides:

22. Every future performance agreement shall be in writing, shall be delivered to the consumer and shall be made in accordance with the prescribed requirements.

43. Impark does not deliver parking agreements in writing as required.

44. Section 22 of the *OCPA* provides that parking agreements be made in accordance with certain prescribed requirements as set-out in section 24 of O.Reg. 17/05 and include:

1. The name of the consumer.
2. The name of the supplier and, if different, the name under which the supplier carries on business.
3. The telephone number of the supplier, the address of the premises from which the supplier conducts business, and information respecting other ways, if any, in which the supplier can be contacted by the consumer, such as the fax number and e-mail address of the supplier.
4. A fair and accurate description of the goods and services to be supplied to the consumer, including the technical requirements, if any, related to the use of the goods or services.
5. An itemized list of the prices at which the goods and services are to be supplied to the consumer, including taxes and shipping charges.
6. A description of each additional charge that applies or may apply, such as customs duties or brokerage fees, and the amount of the charge if the supplier can reasonably determine it.
7. The total amount that the supplier knows is payable by the consumer under the agreement, including amounts that are required to be disclosed under paragraph 6, or, if the goods and services are to be supplied during an indefinite period, the amount and frequency of periodic payments.
8. The terms and methods of payment.
9. As applicable, the date or dates on which delivery, commencement of performance, ongoing performance and completion of performance are to occur.
- ...
11. For services that are to be performed, the place where they are to be performed, the person for whom they are to be performed, the supplier's method of performing them and, if the supplier holds out

that a specific person other than the supplier will perform any of the services on the supplier's behalf, the name of that person.

12. The rights, if any, that the supplier agrees the consumer will have in addition to the rights under the Act and the obligations, if any, by which the supplier agrees to be bound in addition to the obligations under the Act, in relation to cancellations, returns, exchanges and refunds.

...

15. Any other restrictions, limitations and conditions that are imposed by the supplier.

16. The date on which the agreement is entered into.

45. Impark does not comply with the requirements of section 24 of the O.Reg 17/05, as set out above.

46. Section 25 of O.Reg 17/05 requires that a "supplier shall provide the consumer with an express opportunity to accept or decline the agreement and to correct errors immediately before entering into it." Impark does not provide such express opportunity to accept or decline parking agreements nor an opportunity for correction of errors before parking agreements are entered into.

General Remedies under the OCPA

47. Section 93(1) of the OCPA further provides:

93. (1) A consumer agreement is not binding on the consumer unless the agreement is made in accordance with this Act and the regulations.

48. As a result of breach by Impark of statutory requirements of the OCPA, the plaintiffs and class members are not bound by the terms of parking agreements entered into.

49. Section 93(2) of the *OCPA* provides:

93. (2) Despite subsection (1), a court may order that a consumer is bound by all or a portion or portions of a consumer agreement, even if the agreement has not been made in accordance with this Act or the regulations, if the court determines that it would be inequitable in the circumstances for the consumer not to be bound.

It would be inequitable for consumers to be bound to Impark customer agreements in the circumstances.

50. The plaintiffs and class members plead and rely upon section 98 of the *OCPA* which provides as follows:

98. (1) If a supplier has charged a fee or an amount in contravention of this Act or received a payment in contravention of this Act, the consumer who paid the charge or made the payment may demand a refund...

51. The plaintiffs and class members further rely upon sections 100 and 101 of the *OCPA*.

UNCONSCIONABILITY, PENALTIES AND CONTRACTS OF ADHESION

52. Parking agreements are unconscionable in that persons entering into them have no bargaining power. The terms of parking agreements, and in particular, the violation fees, are substantially unfair.

53. Violation fees are penalties at common law. Amounts charged as violation fees do not constitute a genuine pre-estimate of damage suffered by Impark.

54. Parking agreements are contracts of adhesion. Class members have no bargaining power to negotiate or alter the terms of parking agreements.

55. The plaintiffs and class members furthermore rely upon the *Courts of Justice Act*, R.S.O. 1990, c.C-43 as amended, in particular section 98, which provides for relief from forfeiture on such terms as to compensation or otherwise as are considered just.

DAMAGES

56. As a result of the acts and omissions of Impark, the plaintiffs and class members have suffered loss and damage.

57. The plaintiffs and class members claim entitlement to nominal damages in the amount of \$100.00 each.

58. The plaintiffs and class members request that this Court order damages to be paid to class members on an aggregate basis or otherwise in accordance with sections 23, 24 and 25 of the *CPA*.

59. The plaintiffs and class members state that Impark has been unjustly enriched via funds received through violation fees charged in contravention of the *OCPA*. Class members have suffered a corresponding deprivation through payment of such violation fees, with there being no juristic reason for violation fees to be paid to and retained by Impark.

60. The plaintiffs and class members state that it is inequitable to allow Impark to retain monies received as violation fees and state that all such funds are subject to a constructive trust in favour of the plaintiffs and class members.

61. The plaintiffs and class members claim entitlement to an accounting and disgorgement of monies received by Impark as violation fees.

PUNITIVE DAMAGES

62. The plaintiffs and class members state that Impark has engaged in conduct warranting imposition of punitive damages in the circumstances.

63. The plaintiffs and class members state that Impark was aware or should have been aware of the requirements for disclosure mandated by the *OCPA* but despite such knowledge, Impark failed to disclose prescribed information and failed to provide information to class members in a form which could be retained by them.

64. Impark has engaged in conduct warranting the imposition of aggravated, punitive and exemplary damages, including:

- (a) Impark was aware or ought to have been aware of the requirements for disclosure mandated by the *OCPA*;
- (b) despite such knowledge, Impark failed to disclose the prescribed information required under sections 22 and 45 of the *OCPA* and has deliberately flaunted these requirements; and
- (c) Impark has misrepresented its authority to collect violation fees, deliberately created violation notices to resemble legitimate municipal parking tickets, and has charged consumers violation fees which are penalties.

SERVICE OUTSIDE ONTARIO

65. It is anticipated that it might be necessary to serve this Statement of Claim on the defendant outside the province of Ontario and in that regard the plaintiffs plead and rely upon the provisions of Rule 17.02 of the Rules of Civil Procedure R.R.O. 1990 Reg. 194 as amended, and in particular:

- (a) Rule 17.02(f) in respect of a contract made in Ontario and/or breached in Ontario;
- (b) Rule 17.02(g) in respect of a tort committed in Ontario;
- (c) Rule 17.02(h) in respect of damages sustained in Ontario;
- (d) Rule 17.02(p) - a person carrying on business in Ontario.

LEGISLATION

66. The plaintiffs and class members plead and rely upon the provisions of:
- (a) the *CPA*;
 - (b) the *OCPA*;
 - (c) the *Courts of Justice Act* R.S.O. 1990, c. C.43, as amended;
 - (d) the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended.

PLACE OF TRIAL

67. The plaintiffs propose that this action be tried in the City of Toronto in the province of Ontario.

May 28, 2009

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Lawyers for the Plaintiffs

CV-09-00 599652-00CP

Stephanie Graham and Angela Miceli
Plaintiffs

Imperial Parking Canada Corporation
and
Defendant

Court File No:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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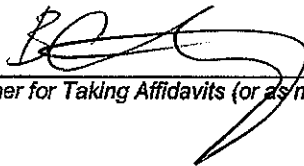
pbates@batesbarristers.com

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Fax: 416.869.9405

Lawyers for the Plaintiffs.

This is "Exhibit B" referred to in the Affidavit of Stephanie
Graham sworn January6...., 2010

A handwritten signature in black ink, appearing to be "B. C.", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

DISPLAY THIS SIDE UP ON DASHBOARD

DETACH RECEIPT FROM TICKET

EXPIRATION DATE

EXPIRATION TIME

DATE ISSUED

TIME ISSUED

AMOUNT PAID

06/04/09 11:18

06/04/09 09:51 \$ 7.25

AMOUNT PAID

CREDIT CARD NUMBER

\$ 7.25 24030049 09:51

GST# 881490627 RT001



CHARGES ARE FOR THE USE OF THE PARKING SPACE ONLY. WE WILL NOT BE RESPONSIBLE FOR LOSS OR DAMAGE TO CAR OR CONTENTS, HOWEVER CAUSED, INCLUDING BUT NOT LIMITED TO FIRE, THEFT OR COLLISION



NON TRANSFERABLE 39484616

RECEIPT 39484616

THIS TICKET PERMITS YOU TO PARK IN ACCORDANCE WITH THE REGULATIONS.

THIS TICKET PERMITS YOU TO PARK IN ACCORDANCE WITH THE REGULATIONS.

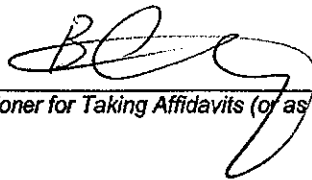
THIS TICKET MUST BE DISPLAYED CLEARLY ON YOUR VEHICLE DASHBOARD AND THE VEHICLE PARKED CORRECTLY.

THIS TICKET MUST BE DISPLAYED CLEARLY ON YOUR VEHICLE DASHBOARD AND THE VEHICLE PARKED CORRECTLY.

39484616

39484616

This is "Exhibit C" referred to in the Affidavit of Stephanie
Graham sworn January6....., 2010

A handwritten signature in black ink, appearing to be "B. G.", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

NOTICE

We, IMPERIAL PARKING CANADA CORPORATION, hereby notify you that you have parked on private property without displaying a valid pass or sufficient valid dispenser ticket(s), or have otherwise improperly parked, as detailed below.

Notice #: **09E347280**

Date Issued (YY/MM/DD)	Time (HH:MM)	Patroller Number
09/04/06	12:41	60
License Plate No.	Exp. Yr.	Prov. State
BEWV884	11	ON
Vehicle Make		
		CAC
Lot Code	Lot Location	
49	20 YORK	
Particulars		
Receipt Expired		
Parking Receipt/s Expired		
REC#39484616 EXP#11:18		

**** PATROLLERS CANNOT CANCEL NOTICES ****

PLEASE REMIT PAYMENT AS FOLLOWS:

NOTICE AMOUNT: = \$68.90
 IF PAID WITHIN 7 DAYS: = \$39.59
 The above amount/s include(s) GST

PAYMENTS AND ENQUIRIES:

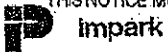
BY MAIL **BY TELEPHONE**
 P.O. BOX 2141 **1-877-903-9933**
 STATION TERMINAL
 VANCOUVER, BC, V6B 3T8
BY INTERNET:
 DO NOT MAIL CASH! **WWW.IMPARK.COM**

To pay by Visa or MasterCard please see reverse

Make Cheques payable to:
IMPERIAL PARKING CANADA CORPORATION



THIS NOTICE MUST ACCOMPANY PAYMENT



15540-083

EXPLANATION OF AMOUNT

The amount on this notice is set to cover lost revenue as well as the costs of patrol and preliminary collection.

THE LEGAL AUTHORITY TO CLAIM THE ABOVE AMOUNT AND/OR HAVE YOUR IMPROPERLY PARKED VEHICLE TOWED ARISES UNDER THE LAW OF CONTRACT AND THE LAW OF TRESPASS.

The above amount is a debt owing to Imperial Parking Canada Corporation and is claimed as an alternative to (or in certain circumstances, in addition to) having your vehicle towed and held for any applicable towing and storage charges.

If this amount remains unpaid for more than thirty (30) days, it will be forwarded to a debt collection agency for collection. We may also tow your vehicle from property managed by us and/or take legal action. Should this charge proceed to a debt collection agency, costs and interest will be added.

To Pay By Credit Card Is Easy:

1. Complete the form below and mail to the address on the front of this notice.
2. Visit our website at www.IMPARK.COM:

Credit Card Type:

Notice # _____ Plate # _____

Cardholder Name: _____

Card No: _____

Expiry Date: _____

Phone No: _____

Signature: _____

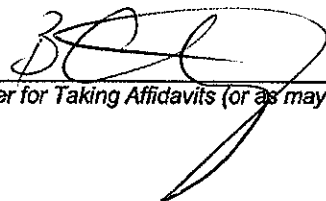
By the evidence of my signature, I hereby authorize the amount set out on the reverse to be charged to my credit card number as noted above.

GST #987315938RT0002



Imperial Parking Canada Corporation

This is "Exhibit D" referred to in the Affidavit of Stephanie
Graham sworn January6...., 2010

A handwritten signature in black ink, appearing to be 'BCL', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Court File No. CV-09-00379652-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

STEPHANIE GRAHAM AND ANGELA MICELI

Plaintiffs

- and -

**IMPERIAL PARKING CANADA CORPORATION
carrying on business as IMPARK**

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992, S.O. 1992, c.6, as amended*

PLAN OF PROCEEDING

INTRODUCTION

1. The *Class Proceedings Act, 1992, S.O. 1992 c. 6, ("CPA")* requires a workable plan to be put in place as part of the certification process. The solicitors for the plaintiffs, Scarfone Hawkins ^{LLP} and Bates Barristers ("Class Counsel") propose that the final plan involve input by the solicitors for the defendant and this Court. The plaintiffs hereby propose the following as a draft Plan of Proceeding.
2. The definitions used in the Statement of Claim apply for purposes of this draft Plan of Proceeding. For ease of reference, the definitions are attached as Appendix "A".

BACKGROUND

3. Impark owns and/or operates parking lots in Ontario. Impark charges persons to park vehicles on Impark lots. The charges are flat fees by the hour or part of an hour.
4. When a person enters onto an Impark parking lot and parks a vehicle, the person enters into a parking agreement with Impark either through purchase of a parking voucher from a mechanical dispenser or through purchase of a parking voucher from a parking lot attendant. The parking voucher is to be displayed on the vehicle dashboard. Some persons enter onto Impark parking lots without purchasing a parking voucher.
5. Parking vouchers contain very little information, identifying only the amount paid, parking time allowed and that the voucher is to be displayed on the dashboard of the vehicle.
6. At the time a person enters into a parking agreement, he/she does not receive the parking agreement in a form in which it can be retained.
7. If a person overstays beyond the parking time purchased or fails to purchase and/or display a parking voucher, Impark charges a violation fee of approximately \$68.90.
8. Initial notification of this violation fee is by way of a violation notice left on the vehicle. A statement notice and/or collection notice are later sent to the vehicle owner by mail.

EXPERIENCE AND RESOURCES OF CLASS COUNSEL

9. Class Counsel possess the requisite knowledge, skill, experience, personnel and financial resources necessary to prosecute this class proceeding.

10. Class Counsel anticipate that prosecuting this action will require:
 - (a) reading, organizing, profiling, scanning, managing and analyzing documents;

 - (b) analysis of complex legal issues; and,

 - (c) marshalling and preparing expert evidence in support of the position of the plaintiffs.

11. Attached at Appendix "B" are copies of the *curriculum vitae* of Paul Bates, David Thompson and Matthew G. Moloci.

THE CLASS

12. The class in this proceeding is proposed to be defined as:

All persons who parked a vehicle or whose vehicle was parked at an Impark parking lot and were charged and paid violation fees to Impark;

COMMUNICATION WITH PUTATIVE CLASS MEMBERS

13. Current information on the status of the proceeding is posted on the Scarfone Hawkins ^{LLP} class action website at www.classactionlaw.ca. The website will be updated regularly and will include copies of Court decisions and other information relating to the proceeding.

14. Class Counsel have established a database of all individuals who have contacted them and will continue to maintain that database so that updates can be provided to putative class members via e-mail as to the progress of the proceeding where appropriate.

LITIGATION SCHEDULE

15. The plaintiffs will be requesting that the Court establish a litigation schedule governing all procedural matters including:
 - (a) delivery of pleadings;

 - (b) documentary production;

 - (c) examinations for discovery;

 - (d) delivery of expert reports; and,

 - (e) trial of the common issues.

16. The requested scheduling order may require amendment from time to time.

CASE MANAGEMENT

17. It is proposed that a schedule of hearing days be set-aside for regular case management conferences in order to facilitate the orderly advancement of this litigation under the supervision of this Court. It is proposed that these case management conferences take place approximately every 60 to 90 days or as otherwise may be required depending on the progress of the litigation, and that same routinely be conducted via telephone conference call to be arranged by Class Counsel.

ORDER CONCERNING PRESERVATION AND PRODUCTION

18. The plaintiffs will seek an Order requiring the defendant to preserve in electronic form all relevant records and documentation relating to the issues raised in the Statement of Claim, and to be produced to Class Counsel in an electronic format as part of documentary production prior to examinations for discovery.

DOCUMENT EXCHANGE AND MANAGEMENT

19. Class Counsel anticipate that documentary production by Impark will be significant. The plaintiffs propose that Impark prepare its affidavit of documents using Summation Blaze litigation software, that all productions be scanned and that Impark's affidavit of documents and productions be provided in CD-ROM format.

20. The plaintiffs propose that the same data management system be used to organize and manage all relevant documents in the possession of the plaintiffs, although the plaintiffs have limited documentation relating to the common issues as compared to the documents possessed by Impark.
21. The plaintiffs propose that affidavits of documents be exchanged 90 days from the issuance of a final order certifying this matter as a class proceeding.

PRODUCTION FROM NON-PARTIES

22. If required, the plaintiffs may pursue motions with respect to production of documents in the possession, control or power of persons that are not parties to this action.
23. Any such motions brought would be brought pursuant to Rule 30.10 on notice to every other party and to the person(s) from whom production is sought.

EXAMINATIONS FOR DISCOVERY

24. The plaintiffs anticipate that the examination for discovery of Impark will require no more than one week, subject to refusals and undertakings.
25. The plaintiffs propose that the representative plaintiffs be produced for examination for discovery by Impark.

26. The plaintiffs anticipate that the examination for discovery of each representative plaintiff will require no more than one-half day.
27. The plaintiffs propose that all required examinations for discovery, subject to refusals and undertakings, be completed within 150 days following the issuance of a final order certifying this action as a class proceeding.

IDENTIFICATION OF CLASS MEMBERS

28. It is possible to obtain the names and addresses of all class members. This information is available through the records of Impark.
29. The plaintiffs propose that a program be undertaken for purposes of preparing a definitive and up-to-date list of the names and addresses of all class members, said list to be prepared from the records of Impark. The plaintiffs propose that the cost of this program be borne by Impark, subject to the approval of this Court.

NOTICE OF CERTIFICATION AND OPT-OUT PROCEDURE

30. The Court will be asked to:
 - (a) fix an opt-out date;
 - (b) settle the form and content of the notice of the certification and opt-out period (the "Notice of Certification"). Attached as Appendix "C" is a draft proposed Notice of Certification.

- (c) settle the means by which Notice of Certification will be given (the "Notice Program").
31. The plaintiffs propose the following Notice Program:
- (a) a direct mailing to all class members as identified from the records of Impark;
 - (b) publication of the Notice of Certification (3) three times in each of the Toronto Star, Toronto Sun, National Post and Globe and Mail newspapers of at least ¼ page in size;
 - (c) the plaintiffs posting the Notice of Certification on Class Counsel's website at www.classactionlaw.ca;
 - (d) the plaintiffs providing the Notice of Certification to any person who requests it.
32. The plaintiffs propose that all costs associated with the Notice Program be paid by Impark, subject to approval of this Court.
33. The plaintiffs propose the following opt-out procedure:
- (a) a person may opt-out of the class proceeding by sending a written election to opt-out to a person designated by the Court before a date fixed by the Court; and,

(b) no class member may opt-out of the class proceeding after the expiration of the opt-out period.

34. The plaintiffs propose that within 30 days after the expiration of the opt-out period, Class Counsel shall report to the Court regarding the class members who have opted out of this class proceeding.

35. The plaintiffs propose that the Court appoint Nicholas Mastroluisi, a chartered accountant with Pettinelli Mastroluisi ^{LLP} in Hamilton to receive the written elections from class members opting-out of the class proceeding and, within thirty (30) days after the expiration of the opt-out period, to deliver to the Court and the parties an affidavit listing the names of all persons who have opted-out of this class proceeding. Attached as Appendix "D" is a copy of a letter dated July 24, 2009 from Nicholas Mastroluisi indicating his willingness to act as Opt-out Administrator.

COMMON ISSUES

36. The plaintiffs propose that the common issues be as follows:

Parking Agreements

a) are parking agreements "consumer agreements" as defined in section 1 of the *Consumer Protection Act, 2002*, S.O. 2002, c.30, Schedule A ("OCPA")?

b) do parking agreements constitute "future performance agreements" as defined in section 1 of the *OCPA*?

- c) if so, does the potential payment obligation under parking agreements exceed \$50.00?
- d) do parking agreements contravene the requirements of section 5 of the *OCPA*?
- e) do parking agreements contravene the requirements of section 22 of the *OCPA*?
- f) do parking agreements contravene the requirements of sections 24 and 25 of Ontario Regulation 17/05 ("O. Reg. 17/05") made pursuant to the *OCPA*?
- g) has Impark engaged in unfair practices in contravention of sections 14, 15 and 17 of the *OCPA*?
- h) are parking agreements rescinded pursuant to section 18 of *OCPA*, or alternatively, are parking agreements not binding pursuant to section 93 of the *OCPA*?
- i) are class members entitled to relief from forfeiture in connection with parking agreements, pursuant to section 98 of the *Courts of Justice Act*, R.S.O. 1990 c. 43 as amended?

Violation Fees

- j) do violation fees constitute illegal charges and/or payments pursuant to section 98 of the *OCPA*?

- k) are violation fees penalties at common law?
- l) has Impark been unjustly enriched via funds received as violation fees?
- m) if so, have class members suffered a corresponding deprivation through such payment of violation fees?
- n) if so, is there a juristic reason for violation fees paid to be retained by Impark?
- o) are violation fees received by Impark held in trust for the benefit of class members?

Damages

- p) if parking agreements contravene the *OCPA* and/or its regulations, is Impark liable to class members for damages?
- q) if so, in what amount?
- r) if violation fees contravene the *OCPA* and/or are penalties, or if Impark has been unjustly enriched through receipt of violation fees, is it liable to class members for damages?
- s) if so, in what amount?
- t) does the conduct of Impark warrant imposition of punitive damages?
- u) if so, in what amount?

- v) if violation fees contravene the *OCPA* and/or are penalties, or if Impark has been unjustly enriched through receipt of violation fees, must Impark provide an accounting of all proceeds received through its collection of violation fees?
- w) if violation fees contravene the *OCPA* and/or are penalties, or if Impark has been unjustly enriched through receipt of violation fees, should this Court impose a permanent injunction restraining Impark from collecting further violation fees?

COMMON ISSUES TRIAL

- 37. The common issues trial will determine whether Impark is liable to the plaintiffs based on the common issues. After the completion of documentary production, examinations for discovery, undertakings and any incidental motions arising therefrom, the plaintiffs will ask the Court to fix a date for the trial of the common issues.

IF THE COURT DETERMINES COMMON ISSUES IN FAVOUR OF THE CLASS

- 38. If the common issues are resolved by judgment in favour of the plaintiffs, the plaintiffs will ask the Court to determine the most efficient and practical means of resolving individual issues, if any, which may remain to be resolved.

ASSESSMENT OF DAMAGES

39. It is submitted that assessment of damages in this case is simple and straightforward. The quantum of violation fees charged to each class member is known to and within the records of Impark.
40. If the common issues are decided in favour of class members, it is entirely possible that all violation fees charged by Impark must be reimbursed to class members. No individual damage assessments will be required. Impark is possessed of information which will indicate the amount of violation fee to be reimbursed to each class member.
41. If assessments of damages are required for eligible class members, they shall proceed in a summary matter pursuant to procedure to be determined by the Court. The plaintiffs will be proposing the simplest, least-expensive and most-expeditious procedure for assessment of damages consistent with justice.
42. If the Court concludes that class members' damages must be assessed individually, then each eligible class member shall be entitled to recover:
 - (a) the full amount of violation fee paid to Impark;
 - (b) a proportionate amount of any punitive damages and pre-judgment interest awarded, if any.

43. The extent of individual issues to be determined and therefore the manner of determination which would be preferable, will not be known until the conclusion of the common issues trial.
44. The plaintiffs will be suggesting that extra-judicial resources be utilized as appropriate and necessary in order to achieve the most cost-effective, just and expeditious determination of any individual issues that remain, such as the appointment of a referee under Rule 54 of the Rules of Civil Procedure.

NOTICE OF RESOLUTION OF THE COMMON ISSUES

45. If the common issues of liability are determined in favour of the class, the plaintiffs will ask the Court to settle the form and content of the Notice of Resolution of the common issues ("Notice of Resolution").
46. The plaintiffs propose that the Notice of Resolution be distributed substantially in accordance with the Notice Program set-out above, except that the Notice of Resolution shall not be mailed to any class member who validly opted-out in accordance with the procedure set-out herein.

COSTS

47. Class Counsel fees, disbursements and applicable taxes shall be paid out of the monies recovered after approval by the Court and shall constitute a first charge upon and shall be paid as the first payment from any monies recovered.

SCARFONE HAWKINS^{LLP}
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P.O. Box 926, Depot 1
Hamilton, Ontario
L8N 3P9

DAVID THOMPSON (LSUC# 28271N)
thompson@shlaw.ca
MATTHEW G. MOLOCI (LSUC# 40579P)
moloci@shlaw.ca

Tel : 905-523-1333
Fax: 905-523-5878

BATES BARRISTERS
34 King Street East, 12th floor
Toronto, Ontario
M5C 2X8

PAUL BATES (LSUC# 22619D)
pbates@batesbarristers.com
BERNADETTE CHUNG (LSUC# 52498A)
bchung@batesbarristers.com

Tel: 416-869-9898
Fax: 416-869-9405

Lawyers for the plaintiffs

TO: **FASKEN MARTINEAU**
66 Wellington Street West
Suite 4200, Toronto Dominion Bank
Tower
Box 20, Toronto-Dominion Centre
Toronto, ON M5K 1N6

PAUL MARTIN
pmartin@fasken.com
Tel : 416 865 4439
Fax: 416 364 7813

Lawyer for the defendant

STEPHANIE GRAHAM et al.
Plaintiffs

-and- IMPERIAL PARKING CANADA CORPORATION, carrying on
business as IMPARK
Defendant

Court File No. CV-09-00379652-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO**

PLAN OF PROCEEDING

SCARFONE HAWKINS LLP
Barristers & Solicitors
One James Street South, 14th Floor
P.O. Box 926, Depot 1
Hamilton, Ontario
L8N 3P9

DAVID THOMPSON (LSUC# 28271N)
thompson@shlaw.ca
MATTHEW G. MOLOCI (LSUC# 40579P)
moloci@shlaw.ca
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Toronto, Ontario
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PAUL BATES (LSUC# 22619D)
pbates@batesbarristers.com
BERNADETTE CHUNG
(LSUC# 52498A)
bchung@batesbarristers.com
Tel: 416-869-9898
Fax: 416-869-9405

Lawyers for the plaintiffs

APPENDIX "A"

DEFINITIONS

The following definitions apply:

- (a) **"Angela"** means the plaintiff, Angela Miceli;
- (b) **"class members"** means all persons who parked a vehicle or whose vehicle was parked at an **Impark parking lot** and were charged and paid **violation fees** to Impark;
- (c) **"collection notice"** is a follow-up notice to a **statement notice** through which a collection agency on behalf of **Impark** demands payment of a **violation fee**;
- (d) **"CPA"** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (e) **"Impark"** means Imperial Parking Canada Corporation;
- (f) **"Impark parking lot"** means a parking lot in Ontario owned and/or operated by **Impark**;
- (g) **"OCPA"** means the *Consumer Protection Act, 2002*, S.O. 2002, c.30, Sch. A;
- (h) **"O.Reg 17/05"** means Ontario Regulation 17/05 made pursuant to the *OCPA*;
- (i) **"parking agreement"** means a contract entered into between a person and **Impark** for parking of a vehicle and use of a parking space at an **Impark parking lot**;

- (j) **“payment voucher”** is a document generated by **Impark** to be displayed on a vehicle dashboard when a person enters into a **parking agreement**;
- (k) **“Stephanie”** means the plaintiff, Stephanie Graham;
- (l) **“statement notice”** is a follow-up notice to a **violation notice** through which **Impark** demands payment of a **violation fee**.
- (m) **“violation fee”** means a monetary amount charged by **Impark** through a **violation notice**.
- (n) **“violation notice”** is the initial means by which **Impark** notifies a person that a **violation fee** is owed to **Impark**, in the following three scenarios:
 - (i) a person overstays at an **Impark parking lot** beyond the parking time allotted under a **parking agreement** through purchase of a **parking voucher**; or
 - (ii) a person fails to display an **Impark parking voucher**; or
 - (iii) a person parks a vehicle and fails to pay.

APPENDIX "B"

DAVID THOMPSON

CURRICULUM VITAE

WORK EXPERIENCE

February, 2001
to present

Barrister and Solicitor
SCARFONE HAWKINS ^{LLP}
Barristers and Solicitors
One James Street South, 14th Floor
Hamilton, Ontario
L8N 3P9

Partner

Civil Litigation Practice with a strong emphasis on Plaintiff Class Action work, and Commercial Litigation. Broad exposure to a wide range of litigation matters including class proceedings, breach of contract, shareholder and corporate disputes, injunctions and mandatory orders, fiduciary duties, negligence, misrepresentation and detrimental reliance, aborted real estate and business transactions, wrongful dismissal and labour disputes, insurance claims and debt collection.

Responsibilities

Client contact, determined problem areas, analyzed problems, recommended and implemented solutions. Negotiated settlements to conflict, participated in numerous interlocutory proceedings in Ontario Superior Court of Justice, numerous trials in Ontario Superior Court of Justice, etc., and appeal proceedings in the Ontario Court of Appeal and Divisional Court.

Also appeared before numerous and various administrative tribunals/committees including Land Division Committees,

Academic Appeals Committees, Workers' Safety and Insurance Board of Ontario, Liquor Licence Board of Ontario and Commercial Registration Appeals Tribunal.

February, 1988 to
January, 2001

Barrister and Solicitor
BROWN, SCARFONE, HAWKINS
Barristers and Solicitors
1050-120 King Street West
Hamilton, Ontario
L8N 3P9

Associate February 1988 - January 1993
Partner February 1993 - January, 2001

June, 1987 to
September, 1987

Student-at-Law
STEPHAN M. FRANKEL
Barrister and Solicitor
4200-100 Main Street East
Hamilton, Ontario
L8N 3W6

Exposure to various areas of law including criminal law, civil litigation and landlord and tenant law.

Responsibilities

Drafting pleadings, and other documents, research and preparing memoranda of law, meeting clients, daily attendance in Ontario Court (Provincial Division) and weekly attendance in Ontario Court (General Division) on interlocutory motions and Landlord and Tenant trials.

June, 1986 to
June, 1987

Articled Student-at-Law
EVANS, PHILP
Barristers and Solicitors
1 King Street West
16th Floor
Hamilton, Ontario
L8P 1A4

Exposure to various areas of law including civil litigation, family law, criminal law, real estate and wills, labour law and administrative law.

Responsibilities

Drafting pleadings and other legal documents, researching

and preparing memoranda of law, meeting clients, full carriage of Small Claims Court files, attendance on motions and adjournments in Ontario Court (General Division) and attendance on motions and adjournments in Ontario Court (Provincial Division)

Summer, 1985

Student-at-Law/Clerk
Unified Family Court
55 Main Street West
Hamilton, Ontario
L8P 1H4

Clerk for Justices Beckett, Goodearle, Mendes da Costa, Steinberg and Van Duzer.

Responsibilities

Legal research, the provision of legal opinions, and the preparation of briefs and memoranda for the five Justices.

Summer, 1984

Student-at-Law/Clerk
Unified Family Court
55 Main Street West
Hamilton, Ontario
L8P 1H4

Clerk for Justices Gravely, Steinberg and Van Duzer.

Responsibilities

Legal research, the provision of legal opinions, and the preparation of briefs and memoranda for the three Justices.

EDUCATION

September, 1987 to
February, 1988

Law Society of Upper Canada
Bar Admission Course
Called to the Bar as a Barrister and Solicitor for the Province
of Ontario:
April, 1988

1983 to 1986

Osgoode Hall Law School
Bachelor of Laws Degree Obtained: May, 1986

- 1980 to 1983 McMaster University
 Bachelor of Arts Degree Obtained: May, 1983
 Graduation Standing: 1 - Summa Cum Laude
 Major: Political Science
- 1975 to 1980 Cathedral Boys' High School
 S.S.H.G.D. Obtained: January, 1980

ACADEMIC AWARDS

- 1982 to 1983 Edwin Marwin Dalley Memorial Scholarship
 McMaster University Dean's Honour List
- 1981 to 1982 Edwin Marwin Dalley Memorial Scholarship
 McMaster University Dean's Honour List
- 1980 to 1981 McMaster University Chancellors' Scholarship
 McMaster University Dean's Honour List
- 1979 to 1980 Ontario Scholarship
 The Permanent Annual Student Writing Award
 Reader's Digest Award
 High School Class Valedictorian

PERSONAL/PROFESSIONAL ACHIEVEMENTS

- 1979 Class Valedictorian - Graduating Class - Cathedral Boys'
 High School.
- 1983 Duty Counsel - Osgoode Hall Community Legal Aid
 Services Programme.
- 1984 to 1985 Assisted Justice David M. Steinberg of the Unified Family
 Court with research for his text, Family Law in the Family
 Courts, Carswell, 1986.

1989

Article published, February, 1989
Hamilton Law Association Newsmagazine - "Arguing
Motions in District and Supreme Court: A Back to Basics
Guide".

Articles published, June, July/August, September and
December, 1989

Let's Talk Business Magazine - Hamilton and Niagara
Editions - Four part series on Business Contracts.

Guest Speaker - Cathedral Girls' High School
Topic - Tort Law and Civil Litigation.

Guest Speaker - Hamilton Catholic High Schools
Conducted mock civil trial.

Guest Speaker - C.H.M.L. Radio
John Hardy Show "Your Day in Court".

Travelled to Tokyo, Japan to conduct cross-examinations on
a complex commercial litigation matter involving a heavy
equipment distributorship agreement. Multi-million dollar
settlement ultimately achieved.

1990

Member - Editorial Board, Hamilton Law Association
Newsmagazine.

Member - Library Committee, Hamilton Law Association.

Article published, January, 1990
Hamilton Law Association Newsmagazine
"Far Eastern Observations".

Article published, June/July, 1990
Hamilton Law Association Newsmagazine
"Use of Factums in Motions Court".

Article published, September, 1990
Hamilton Law Association Newsmagazine
"Court Reform in the Central South Region".

1991

Member - Editorial Board, Hamilton Law Association
Newsmagazine.

Vice-Chairman - Library Committee, Hamilton Law
Association.

Article published, May, 1991
Hamilton Law Association Newsmagazine
"Civil Pre-Trials - Maximizing Their Effectiveness".

Article published, September, 1991
Hamilton Law Association Newsmagazine
"Interlocutory Injunction Applications - Practical Tips".

Guest speaker - Kelsey's Restaurant Managers' Meeting
Tort Liability for Serving Liquor in the Hospital Industry.

Guest speaker - LMC Management Consultants
Employment Law Seminar
Fiduciary Obligations of Employees.

1992

Trustee of the Board of Directors,
Hamilton Law Association.

Member - Editorial Board,
The Hamilton Lawyer Newsmagazine.

Member - Library Committee,
Hamilton Law Association.

Chairman - Young Lawyers' and Articling Students'
Committee
Hamilton Law Association.

Article published, September, 1992
Contact Magazine
"What to Expect in a Lawsuit".

Article published, September, 1992
The Hamilton Lawyer Newsmagazine
"Fiduciary Obligations of Real Estate Agents".

1993

Trustee of the Board of Directors,
Hamilton Law Association
Editor-In-Chief,
The Hamilton Lawyer Newsmagazine.

Member - Library Committee,
Hamilton Law Association.

Regular contributor to The Hamilton Lawyer Newsmagazine,
Restaurant Review column.

Guest speaker - Hamilton Law Association,
Practical Tips for the Courtroom.

1994

Trustee of the Board of Directors,
Hamilton Law Association.

Editor-In-Chief,
The Hamilton Lawyer Newsmagazine.

Member - Library Committee,
Hamilton Law Association.

Guest speaker - Hamilton Law Association,
Evidence: A Practical Guide.

Guest Speaker - C.F.M.U. Radio
"Court Process and Procedure".

Lecturer/Speaker - Ontario Trial Lawyers Association Spring
Conference
"Breach of Fiduciary Duty".

1995

Trustee of the Board of Directors,
Hamilton Law Association.

Member - Editorial Board
The Hamilton Lawyer Newsmagazine.

Guest Speaker - Hamilton Law Association
Preparing Witnesses to Give Evidence at Trial.

Guest Speaker - CHCH T.V.
2 on-air television appearances.

- 1996
- Member - Advocates' Society.
 - Member - Editorial Board
The Hamilton Lawyer Newsmagazine.
 - Guest Speaker - Hamilton Law Association
Arguing Motions in Ontario Court (General Division).
 - Guest Speaker - The Advocates' Society
Alternative Dispute Resolution.
 - Guest Speaker - The Law Society of Upper Canada, The
Ontario Court of Justice and The Canadian Bar Association
- Ontario
The Simplified Rules of Civil Procedure.
- 1997
- Member - Advocates' Society.
 - Member - Ontario Trial Lawyers Association.
 - Member - American Trial Lawyers Association.
 - Retained as Class Counsel on several large complex claims
under the Class Proceedings Act acting for hundreds of
thousands of class members in claims involving millions of
dollars.
 - Received significant media exposure regarding the Class
Action claims including Articles in The Globe & Mail, The
Financial Post, Toronto Star, etc.
- 1998
- Member - Advocates' Society.
 - Member - Ontario Trial Lawyers Association.
 - Member - American Trial Lawyers Association.
 - Participation in Alberta Trial Lawyers Conference ("Rockies
Rendezvous"), Banff Springs, Alberta.
- 1999
- Member - Advocates' Society.
 - Member - Ontario Trial Lawyers Association.
 - Member - American Trial Lawyers Association.

Guest Speaker - Ancaster Mens Club - Litigation Procedures and Class Actions.

Founding principal of e-incorp Inc., Canada's online corporate services provider.

2000

Member - Advocates' Society.

Member - Ontario Trial Lawyers Association.

Member - American Trial Lawyers Association.

Continuing involvement as Lead Counsel in large Class Action claims including attendances in New York and Vancouver in respect of such matters.

Article published - Lorman Education Services Seminar - "Employee Termination in Ontario: Navigating The Press - - Important Termination Concerns".

Guest Speaker - Downtown Rotary Club - The Internet: Changing the Dynamics of Small Business in Canada.

2001

Achieved successful settlement of Vanishing Premium Class Action Claim against Canada Life Assurance Company on a national basis on behalf of approximately 135,000 policyholders. Settlement Agreement signed February. Court Approval obtained April.

Travel to San Diego, California for participation in Association of Fundraising Professionals International Conference on Fundraising.

Founding principal of Freewills.com, an online free will-preparation service that uniquely links will-preparation with the encouragement and availability of charitable giving. Involvement included all aspects of business start-up including strategic vision, conceptualization, design and development of product, overall management, marketing and sales, operations, implementation, securing subscriptions, preparation of business plan, etc.

Guest Speaker - Lorman Education Services Seminar, Employee Leave Issues/Maternity and Parental Leave Issues, April 26, 2001.

Guest Speaker- Lorman Education Services Seminar, Employee Termination in Ontario: Navigating the Process - Important Termination Concerns, May 17, 2001.

Article published, Spring, 2001 issue of the "The Litigator. Journal of the Ontario Trial Lawyers Association" - "Class Proceedings and Product Liability Claims".

Achieved successful settlement of Vanishing Premium Class Action Claim against London Life Insurance Company on a national basis on behalf of approximately 890,000 policyholders (settlement value \$260M). Settlement Agreement signed June, 2001; Court approval obtained October, 2001; Final Court approval by Ontario Court of Appeal, February, 2002.

Travel to Indianapolis, Indiana for participation in National Association of Gift Planners Conference.

2002

Travel to St. Louis, Missouri for participation in Association of Fundraising Professionals International Conference on Fundraising.

Guest Speaker - Lorman Education Services Seminar - Employee Leave Issues April 27, 2002.

Guest Speaker - The Canadian Institute, Litigating Class Actions Seminar, September 26 and 27, 2002.

2003

Guest Speaker - Insight Conference: Class Actions - The Litigators' Conference, "Certification Update", January 27 and 28, 2003.

Guest Speaker - Ontario Trial Lawyers Association Spring Conference, Class Actions, May 31, 2003.

Achieved successful settlement of Class Action claim against Canada Post Corporation, Cybersurf Corp. and 3Web Corp. on a national basis on behalf of approximately 150,000 customers who purchased a CD-Rom product that did not function as represented. Settlement Agreement signed July, 2003; Court approval obtained December, 2003.

2004

Achieved successful settlement of Class Action claim against Bell Canada on a national basis on behalf of approximately 750,000 subscribers to Bell Canada's First Rate™ long distance plan in connection with unilateral

billing changes. Settlement Agreement signed March, 2004;
Court approval obtained May, 2004.

Received widespread media exposure in respect of
settlement of Bell First Rate Class Action, including articles
in Toronto Star (lead story in Business Section, etc.,)
Hamilton Spectator, etc.

Appeared as guest commentator on legal issues on CH TV
"Live @ 5:30" television news program.

Received significant media exposure regarding new class
action claim against Bell Canada relating to modem
hijacking, including articles in the Toronto Star, Hamilton
Spectator, radio news broadcasts and appearances on CH
TV television news program.

Guest Legal Consultant on CH TV. Several on-air television
appears on various legal topics.

2005

Speaker at Advocate's Society, Court House Series,
seminar re: Mock Summary Judgment Motion and Effective
Advocacy in Motions Court, February 10, 2005.

Speaker at Cross-Border Commercial Litigation Seminar re:
Class Actions: Cross-Border Issues, April 7th and 8th, 2005.

Speaker at The 5th Annual Advocacy Conference, seminar
re: Class Actions: Nuts & Bolts of a Class Action, April 20,
2005.

Appeared as guest commentator on various legal issues on
CH TV "Live @ 5:30" television news program.

2006

Multiple Appearances as Guest Legal Consultant on CHML
radio program re: Payday Loan litigation.

Chairman of the 1st Annual Hamilton Law Association
Current Issues In Commercial Litigation Seminar held April
6, 2006.

2007

Co-Chairman of the 2nd Annual Hamilton Law Association
Current Issues In Commercial Litigation Seminar held April
12, 2007.

2008 Co-Chairman of the 3rd Annual Hamilton Law Association Current Issues In Commercial Litigation Seminar held March 27, 2008.

Member – Board of Directors of Mark Preece Family House—a family house to be located near the Hamilton General Hospital to provide close, accessible and affordable short-term accommodation for the families of adult patients in Hamilton hospitals.

2009 Co-Chairman of the 4th Annual Hamilton Law Association Current Issues In Commercial Litigation Seminar held March 12, 2009.

Member – Board of Directors of Mark Preece Family House.

Speaker at Hamilton Law Association 9th Annual Advocacy Conference re: Update on Class Actions, April 30, 2009.

Article published May, 2009 edition “Commercial Litigation Review” Volume 7, Number 2. Co-author of article on Blended Retainer Agreements with Heather C. Devine and James Tausendfreund(Gowlings)

Multiple Appearances as Guest Legal Consultant on CHML radio program re: Facebook Terms of Service, Access to Courts for terror victims, etc.

CERTIFICATIONS AND SUCCESSFUL RESOLUTIONS OF CLASS PROCEEDINGS

2009

Robinsons v. Rochester Financial et al. – Certification motion argued June 23, 24, 25, the Honourable Madam Justice Lax; decision under reserve.

Watson et al v. Northstar Aerospace, Inc., and Northstar Aerospace (Canada) Inc. – Certification and court approval of settlement, June 18, the Honourable Mr. Justice Perell.

2008

McCutcheon v. The Cash Store et al. – Court approval of settlement, December 2, the Honourable Mr. Justice Cullity.

Zonolite Attic Insulation – CCAA Court approval of settlement on behalf of all Canadian ZAI claimants, October 17, the Honourable Mr. Justice Morawetz, Superior Court of Justice – Commercial Court.

2007

Bellaire/LaRocca et al. v. Salim Daya and Hamilton Health Sciences Corporation, [2007] O.J. No. 4819 – Certification and court approval of settlement, December 14, the Honourable Madam Justice Hoy.

2006

McCutcheon v. The Cash Store et al, [2006] O.J. No. 2360 - Certified May 10, the Honourable Mr. Justice Cullity.

Jones v. Royal Botanical Gardens et al - Certification and court approval of settlement, September 28, the Honourable Mr. Justice Crane.

Humphreys et al. v. Select Financial et al., (Hamilton Court file No. 01-3510CP) (Unreported) - Certification and court approval of settlement, November 2, the Honourable Mr. Justice Crane.

Zonolite Attic Insulation – Appointed as Representative Counsel for all Canadian ZAI claimants, February 8, the Honourable Mr. Justice Farley.

2004

Sajecki v. Bell Canada - Certification and court approval of settlement, May 10, the Honourable Mr. Justice Crane.

2003

McArthur v. Canada Post Corporation et al, [2004] O.J. No. 1406 - Certification and court approval of settlement, December 22, the Honourable Mr. Justice Crane.

2001

Gibbs v. Canada Life Assurance Co., [2001] O.J. No. 6269 - Certification and court approval of settlement, April 4, the Honourable Mr. Justice Cumming.

Directright Cartage Ltd. v. London Life Insurance Co., [2001] O.J. No. 4073 - Certification and court approval of settlement, October 18, the Honourable Mr. Justice Cumming.

CURRENT CLASS PROCEEDINGS

McKee's Carpet Zone v. Sears Canada Inc., Sears, Roebuck and Co. and Home Coverings Buying Group Inc. – This proceeding is brought on behalf of all individuals or entities in Canada who/which entered into a license agreement with Sears for operation of a "Sears Floor Covering Centre", since 1998.

Stephanie Graham and Angela Miceli v. Imperial Parking Canada Corporation carrying on business as Impark – This proceeding is brought on behalf of all persons who parked a vehicle or whose vehicle was parked at an Impark parking lot and were charged and paid violation fees to Impark.

Levesque v. Ford Motor Company of Canada - This proceeding is brought on behalf of all individuals in Canada who were offered employment by Ford commencing in July, 2008 as part of a Third Work Shift at Ford's Oakville plant.

Kafka et al. v. Allstate Insurance Company - This proceeding is brought on behalf of all Allstate agents across Canada who were employed by Allstate as of July 27, 2007 and who were constructively dismissed.

Robinsons v. Rochester Financial et al - This proceeding is brought on behalf of persons who participated in the Banyan Tree Gift Program, a leveraged charitable donation program, for taxation years 2003-2007.

Penney et al. v. Bell Canada - This proceeding is brought on behalf of wireline telephone customers of Bell Canada, being persons who made arrangements or wireline telephone service to be installed in their homes between March 24 and December 31, 2005.

Cotton et al. v. Michaels Stores Inc - This proceeding is brought on behalf of persons in Canada who were/are former employees/employees of Michaels who worked in excess of 44 hours in any given week without receiving overtime pay.

MATTHEW G. MOLOCI
CURRICULUM VITAE

PROFESSIONAL EXPERIENCE

1999
to present

SCARFONE HAWKINS ^{LLP}
Barristers and Solicitors
One James Street South, 14th Floor
Hamilton, Ontario
L8N 3P9

Associate – 1999 – 2007
Partner – 2007

Practice areas: bankruptcy/insolvency, commercial,
construction, employment, estates and class action litigation

Carriage of complex litigation matters through trial and
appeal

Mentoring associates and students

1998 – 1999

PENMAN & PENMAN ^{LLP}
Barristers and Solicitors
206-4195 Dundas Street West
Etobicoke, Ontario
M8X 1Y4

Associate lawyer

Client development, law firm administration and carriage
and management of litigation matters

Practice areas included: personal injury, employment,
family, commercial, construction lien and estates
Some experience in corporate/commercial, real estate and
estate matters

1996 - 1997

STEWART, ESTEN ^{LLP}
Barristers and Solicitors

100 Collier Street
Barrie, Ontario
L4M 4V3

Student-at-law

1996

PENMAN & PENMAN ^{LLP}
Barristers and Solicitors
206-4195 Dundas Street West
Etobicoke, Ontario
M8X 1Y4

Summer Student

1995

MILLER THOMSON ^{LLP}
Barristers and Solicitors
Toronto, Ontario

Summer Student

Assisted with the research and writing of John Sproat's
textbook on constitutional law and the *Charter of Rights and
Freedoms*

Co-author: "Non-Competition and Non-Solicitation
Agreements", with John Sproat, Federated Press, Executive
Employment Law seminar

1985-1993

TNT CANADA INC./ TRANSFREIGHT INC.

Manager, Specialized transportation and logistics

Eight-year career in specialized transportation and logistics
General management of successful operating division

EDUCATION

February 26, 1998	Called to the Ontario Bar, Law Society of Upper Canada
1993-1996	Bachelor of Laws, Dalhousie University
1984-1986	Sheridan College of Applied Arts and Technology Motor Carrier Administration

NOTABLE CIVIL LITIGATION CASES

Shekhdar v. K & M Engineering and Consulting Corporation (2004), 71 O.R. (3d) 475 (S.C.J.).
Lead counsel at trial and on appeal.

Schaible Electric Ltd. v. Melloul-Blamey Construction Inc., [2004] O.J. No. 3088, affirmed
[2005] O.J. No. 3226 (C.A.). Lead counsel at trial and on appeal.

Choquette v. 995146 Ontario Ltd. [2004] O.J. No. 3593 (C.A.). Lead counsel at trial and on
appeal.

CERTIFICATIONS AND SUCCESSFUL RESOLUTIONS OF CLASS PROCEEDINGS

2009

Robinsons v. Rochester Financial et al. – Certification motion argued June 23, 24, 25, 2009,
before the Honourable Madam Justice Lax; decision under reserve.

2008

McCutcheon v. The Cash Store et al. – Court approval of settlement, December 2, the
Honourable Mr. Justice Cullity.

Zonolite Attic Insulation – CCAA Court approval of settlement on behalf of all Canadian ZAI
claimants, October 17, the Honourable Mr. Justice Morawetz, Superior Court of Justice –
Commercial Court .

2006

McCutcheon v. The Cash Store et al, [2006] O.J. No. 2360 - Certified May 10, the Honourable Mr. Justice Cullity.

Humphreys et al. v. Select Financial et al., (Hamilton Court file No. 01-3510CP) (Unreported) - Certification and court approval of settlement, November 2, the Honourable Mr. Justice Crane.

Zonolite Attic Insulation – Appointed as Representative Counsel for all Canadian ZAI claimants, February 8, the Honourable Mr. Justice Farley.

CURRENT CLASS PROCEEDINGS

McKee's Carpet Zone v. Sears Canada Inc., Sears, Roebuck and Co. and Home Coverings Buying Group Inc. – This proceeding is brought on behalf of all individuals or entities in Canada who/which entered into a license agreement with Sears for operation of a "Sears Floor Covering Centre", since 1998.

Stephanie Graham and Angela Miceli v. Imperial Parking Canada Corporation carrying on business as Impark – This proceeding is brought on behalf of all persons who parked a vehicle or whose vehicle was parked at an Impark parking lot and were charged and paid violation fees to Impark.

Kafka et al. v. Allstate Insurance Company - This proceeding is brought on behalf of all Allstate agents across Canada who were employed by Allstate as of July 27, 2007 and who were constructively dismissed.

Robinsons v. Rochester Financial et al - This proceeding is brought on behalf of persons who participated in the Banyan Tree Gift Program, a leveraged charitable donation program, for taxation years 2003-2007.

Cotton et al. v. Michaels Stores Inc - This proceeding is brought on behalf of persons in Canada who were/are former employees/employees of Michaels who worked in excess of 44 hours in any given week without receiving overtime pay.



Paul Bates

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Practice Area

Complex Commercial Litigation

Achievements

Certified as a Specialist in Civil Litigation
Canadian Legal Expert Directory 2005

Professional Affiliations

Law Society of Upper Canada
Canadian Bar Association
Ontario Bar Association
American Bar Association
Advocate's Society
ARIAS – U.S.
Toronto Computer Lawyers' Group
The Osgoode Society for Canadian Legal
History
Institute of Corporate Directors (ICD)

Community Involvement

Volunteer member of charitable and
community interest boards, including
McMichael Canadian Art Foundation, and
Toronto Fashion Incubator

Bar Admissions

Ontario, 1983

Education

University of Toronto, Faculty of Law,
LLB, 1981
York University, LLM, 2003 E-commerce

PAUL J. BATES LLB, LLM

PROFESSIONAL EXPERIENCE

Extensive experience in complex commercial litigation,
public law, and appeals, including:

- Securities litigation and shareholders remedies, franchise and distribution law, financial services, real estate development, intellectual property, professional liability, and class proceedings;
- Has appeared at all levels of the Canadian court system, including the Federal Court of Appeal, and the Supreme Court of Canada, generating numerous reported decisions;
- Earned recognition for skillful advocacy in novel and complex issues related to class actions, arbitration jurisdiction and process, distribution of financial services, sexual harassment, the law of information and privacy, public law, regulation of commercial contracts, municipal law, citizenship, taxation, conflicts of laws, personal injury damage assessment, civil procedure, the law of privilege, limitation periods, insurance law, medical malpractice, the law of injunctions, professional liability, jury trial process, professional liability, and punitive damages;
- Publication of numerous papers in professional journals, including the *Advocates Quarterly*;
- Frequent lecturer and instructor in the profession on topics reflecting his diverse practice profile; and
- Certified by ARIAS-U.S. as an arbitrator in international reinsurance disputes.

REPRESENTATIVE WORK

Appeared at all levels of the Canadian court system, including major briefs on behalf of:

- A patent-holder of significant CFC-free refrigerant technology in lengthy and complex commercial litigation arising out of a joint venture agreement signed in Beijing, China.
- A major commercial mortgage investor in lengthy trial proceedings against mortgage intermediaries.
- The owner of Tim Hortons in the successful defence of the claim to rescind a sale transaction based on allegations of undue influence.
- One of Canada's leading forestry products companies in major commercial insurance recovery of in excess of \$8,000,000 owing from property insurers.
- One of the world's largest international reinsurers in arbitration proceedings for the successful recovery of almost one hundred percent of a substantial indemnity payment owing from retrocessionaires situated throughout the world.
- A leading Canadian financial institution in major Canadian litigation concerning termination of its primary distribution channel involving damages claims in excess of \$100,000,000.
- The operator of a national food services brand in franchise termination and injunction litigation involving damages claims in excess of \$40,000,000.

REPORTED DECISIONS

Please see attached Appendix A

ARTICLES AND PUBLICATIONS

Paul's papers include:

2007

February The Future of Franchise Litigation in Ontario, "Crystal Ball Gazing" on what to expect in the next few years, Presented at the Ontario Bar Association

2006

October Canadian Franchise Disputes (PowerPoint Presentation)

May Canadian Institute – "Managing and Resolving Insurance Coverage Disputes" – Panel Discussion Précis

- February Ontario's New Securities – New Duties for Actuaries and Fiduciaries
- January Causation in Tort Law – Material Contribution Test (Insight - LSUC)
- 2005**
- December Reinsurance Arbitrations - Insurance Litigation Disputes (Infonex)
- November Ontario's New Civil Liability Regime for Secondary Market Disclosure (Ontario Bar Association – Pension Section)
- October Franchise and Distribution Law (Ontario Bar Association – OBA Annual Update)
- September Annual Canadian Case Law and Legislative Update
- July Canada Cryptography Policy – Moving Ahead in the 21st Century (Canadian Journal of Law and Technology) – CJLT Vol. 4-3, Nov 2005 (Dalhousie Journal of Law and Technology)
- June Reinsurance Arbitrations – A Canadian Perspective (Canadian Institute)
- May The Conduct of an Appeal (Ontario Trial Lawyers Association)
- March Negotiating, Documenting and Enforcing Settlements (Osgoode Hall)
- February Dealing with Annoying Chronic Tenant Defaults (LSUC) (The Six Minute Leasing Lawyer - 2005)
- 2004**
- October OBA Franchise Law – 10 Most Important Decisions in Franchising
- October Financial Advisors – Professional Liability Presentation to Manulife
- June Canadian Institute - Damages Update – OBA Franchise Law Program “Current Trends in Franchise Litigation”
- May Advocis - "Professional Liability of Financial Planners"

- May Ontario Bar Association - Doing Business Online - E-transactions
- May Canadian Defence Lawyers annual conference - E-commerce Liabilities
- 2003**
- December "The Blackout – Insurance Questions" – LSUC Presentation
- November The Conduct of an Appeal – presentation to OBA
- October program "Franchise Termination Disputes" - presentation to Insight education
- August The Laws of the New Marketplace (Online Liability in Canada)
- April Group "Canadian Cryptography Export Controls" – Toronto Computer Lawyers
- April "Digital Evidence" – Lawyers Professional Indemnity Company
- March Advocacy Demonstration at Ontario Bar Association Annual Institute
- March Ontario Bar Association presentation to Civil Litigation Section re: Electronic Evidence
- February "Online Liability Issues" presentation to Osgoode Hall Law School Professional Development Program
- February "Practical Aspects of Franchise Terminations", presentation to Ontario Bar Association Franchise Law Subsection
- 2002**
- December "Canadian Cryptography Policy", LLM thesis, Osgoode Hall Law School
- November P J. Bates, E-Commerce Liability Issues and Insurance Law – presentation to the Canadian Institute and LSUC
- November "E-commerce and Insurance", presentation to Law Society of Upper Canada "6-Minute Insurance Lawyer" program
- October "Good Faith in Canadian Franchise Law", panel member, Ontario Bar Association, Franchise Law Subsection
- 2001**
- July P. J. Bates, Simon A. Clements and Michael W. Kortess, "The Commercial

General Liability Insuring Agreement As Applied to Products Liability"
Canadian Journal of Insurance Law Volume 19, Number 4

2000

February P. J. Bates and J. Cameron, "Settlement of Complex Liability Lawsuits: Opportunities and Perspectives" (2000) 22 Adv. Quart. 265, originally presented in November 1992 to Canadian Institute seminar, and subsequently to Osgoode Hall Law School in Nov. 1998

1998

October Internet E-Commerce and Litigation - Presentation on Jurisdiction and Choice of Law Issues to Osgoode Hall Law School Business law Seminar

February Year 2000 Insurance Coverage Disputes For Litigators, Insurers and Corporate Counsel - Lexpert Seminar panel member

1997

September Punitive Damages - Panel discussion at the Canadian Defence Lawyers/Defence Research Institute Conference

1996

November Case Comment on Foundation Co. of Canada v. American Home Assurance Co. (1995), 25 O.R. (3d) 36, 21 C.L.R. (2d) 205 (Gen. Div.), published at page 299, Vol. 6, No. 3 of Canadian Insurance Law Review

November Interpretation of Construction Contract Language By The Courts - paper presented to the Educational Program Innovations Centre

October Environmental Insurance and Claims - Current Trends and New Developments for Insurers - paper presented to The Canadian Institute

September Editor of Arthur Andersen's "The Accountant's Guide to Litigation Support Services"

May Reinsurance Arbitrations - A Canadian Perspective - paper presented to The Canadian Institute (revised November 25, 1996)

1995

June The Commercial General Liability Insuring Agreement as Applied to Product Liability - paper presented to The Canadian Institute

April The Civil Pre-Trial Conference in Ontario - paper presented to the Advocates' Society

- February Product Liability Insuring Agreement - paper presented to The Canadian Institute
- 1994**
- September Case Comment on Molson Companies Ltd. v. Royal Insurance Co. of Canada, [1994] I.L.R. 1-3010 published at page 94, Vol. 5 Canadian Insurance Law Review. - republished in The Canadian Independent Adjuster, March 1995, p. 40
- May "Liability Insurance Coverage Disputes: Acting for the Insured" - 1994 - 16 Adv. Quart. 169, and presented to the Ontario Risk and Insurance Management Society, originally presented June 1991 to Insight Educational Services seminar
- 1993**
- March Arthur Anderson, Forensic Accounting Court Room Presentations School, Chicago, 1994 U.S.A.
- October Exclusions Applicable to Product Liability Claims - paper presented at a seminar of The Canadian Institute, published (1994) 4 C.I.L.R. 245 and republished Claims Reporter, November, 1994 - Vol. 6, No. 2
- June Denying Coverage in Insurance Claims - paper presented at a seminar of The Canadian Institute
- June "Principles on Interest: Judgment Interest In Ontario" 15 Adv. Quart. 171 originally presented July 1992 to Canadian Institute seminar
- May Statutory Limitation Periods and the New Limitations Act - paper presented at a CBAO - CLE Program - A Potpourri of New and Not-So-New Statutory Remedies Litigators Need to Know
- May "Discussions of Selected Coverage Issues: The Pollution Problem; The Elusive Intention of an Insured; and the Prior Knowledge Problem", (1993), Vol. 4 C.I.L.R. 97
- April CGL Coverage and Environmental Losses - IBC 2001 (June 1978) and IBC 2100 (August 1987) - Paper presented at a Law Program for the Institute of Insurance for Ontario
- 1992**
- November Cross-examination of Forensic Accounting Expert - C.I.C.A. Education Program - Demonstration Cross-Examination
- January "Mitigation of Damages: A Matter of Commercial Common Sense", 13

Adv. Quart. 273, originally presented May 1991 to Insight Education seminar

- January "Bad Faith in Defence of Third Party Claims: The Need for a Made-in-Canada Law", (1991), 1 C.C.L.I. (2d) 160
- 1991**
- July "Class Actions - Finally", Vol. 3 No. 3 - Royal Insurance Canada - Claims Reporter June & "Corporate Counsel's Ethical Dilemmas" - paper presented to Insight
- 1990**
- May "The Canadian Law of Impact Costs - Demystifying the Mystique", Paper presented to Nova Scotia Technical College Construction Law Program, pending publication in "The General Magazine of Ontario General Contractors Association"
- January "You and Your Lawsuit", paper presented to Nova Scotia Technical College Education Program, published 37 C.L.R. 165.
- 1989**
- October Case Comment on Algoma Central Railway v. Herb Fraser & Associates Ltd. (1988), 66 O.R. (2d) 330 (Div.Ct.), 10 Adv.Quar. 495
- May "Getting the Case Off to a Good Start", paper: September 1989 - presented to CBAO Intensive Civil Advocacy Program (2 sessions)
- May "Limitation Periods: Proposed Reforms", paper presented to CBAO Health Law Section Program
- May Case Comment on WA Stephensen Construction (Western) Ltd. v. Metro Canada Limited (1988), 32 C.L.R. 48 (B.C.S.C.) Republished at 15 July 1991 Canadian Institute Continuing Education Seminar
- 1985-1989* Contributing Editor, Carswell's Practice Cases
- 1988**
- 1988 Annotation: Carswell's Practice Cases: Seaway Trust Company et al v. Markle et al (1988), 25 C.P.C. (2d) 64 (Ont. Mast.) - analysis of law applicable to motion to amend pleadings - factual underpinnings of proposed allegations not to be considered
- 1988 Annotation: Carswell's Practice Cases: Swain et al v. Lake of Woods Dist. Hosp. et al (1988), 26 C.P.C. (2d) 152 (Ont. H.C.J.) - criticism of

alleged judicial discretion to waive limitation period

- 1988 Annotation: Carswell's Practice Cases: Oakville Storage & Forwarding Company Ltd. v. C.N.R. (1988), 27 C.P.C. (2d) 56 (Ont. H.C.J.) - analysis of the distributive costs principle in complex modern litigation
- November "Limitation Periods: Time for Statutory Reform", paper presented to the Advocates' Society
- October "New Horizons in Risk", The Canadian Business Law Newsletter, published by Carswell Legal Publications
- June "The Injunction: When Money is Not Enough", The Canadian Business Law Newsletter, published by Carswell Legal Publications
- May "The Law of Limitations Should be Reformed", paper presented to L.S.U.C. Civil Litigation Seminar
- May "Cross Border Torts", Canadian Underwriter Magazine
- January "Discovery of Documents - What to Watch Out For and What to Remember", 1988 C.B.A.O. Annual Institute on Continuing Legal Education, Co-author with Mark Lerner
- 1987**
- December "Foreign Torts: The Canadian Choice of Law Rule", 8 Adv.Quar. 397
- 1987 Annotation: Carswell's Practice Cases: Power v. Probert (1987), 19 C.P.C. (2d) 142 (Ont. Dist. Ct.) - analysis of the effect of anomalies in the tort conflicts of laws rule on the test for declining jurisdiction on discretionary principles
- 1987 Annotation: Carswell's Practice Cases: Nelson Burns & Company et al v. Graham Industries Limited et al (1987), 23 C.P.C. (2d) 279 (Ont. C.A.) - analysis of the necessity, effect and enforceability of a plaintiff's R. 40.03 undertaking as to damages given in support of an interlocutory injunction
- 1985**
- May "The Spills Bill", presentation to Natural Resources and Energy Law Section of CBAO
- May "Professional Liability and Responsibility", Chairperson of Insight Seminar
- 1986 Annotation: Carswell's Practice Cases: Brown v. Hodsoll et al (1986), 7 C.P.C. (2d) 267 (Ont. H.C.J.) - plaintiff's solicitors not restrained from

continuing to act for plaintiff, when defendant's former solicitor joined the partnership. No prejudice to plaintiff likely to result, and counsel undertook to preserve confidences owed by defendants' former solicitor to defendant

- 1986 Annotation: Carswell's Practice Cases: Machado v. Berlet (1986), 15 C.P.C. (2d) 207 (Ont. H.C.J.) - surveillance films of plaintiffs in personal injury litigation are privileged under the solicitor's work product principle; the rule of fair advocacy in Browne v. Dunn respecting impeachment must be followed in use of surveillance evidence at trial
- 1985
- 1985 Annotation: Carswell's Practice Cases: Hattori Overseas (Hong Kong) Limited v. Phillip Cox Agency Inc. (1985), 2 C.P.C. (2d) 257 (Ont. Div.Ct.) - doctrine of equitable set off applies to claims for unliquidated damages
- 1985 Annotation: Carswell's Practice Cases: NEC Corporation v. Steintron Int. Electronics Inc., (1985), 5 C.P.C. (2d) 187 (Ont. H.C.) - Mareva injunction available in an action based on a foreign judgment under appeal
- 1985 Annotation: Carswell's Practice Cases: Air Canada v. Meridien Credit Corporation Canada Limited; F.S. Sellar (1976) Ltd. (third Party) (1985), 6 C.P.C. (2d) 195 (Ont. Dist. Ct.) - plaintiff may examine for discovery third party that is adverse in interest, where third party does not defend main action
- June "Limitation of Actions", Chairperson of CBAO Seminar
- April "Disclosure of Insurance Pursuant to Ontario's *New Rules of Civil Procedure*", (1985), 47 C.P.C. 232
- March "Time Management", CBAO-YLD Workshop, published "The National", C.B.A. Newspaper, June 1986
- February "Consumer Sales: A Commentary on Liability and Defences", CBAO Annual Institute on Continuing Legal Education
- January "Ontario's New Rules of Civil Procedure: A Commentary on Certain Provisions Applicable in Actions Involving Insurance", CBAO Continuing Legal Education Workshop
- 1984
- December "Professional Liability of Corporate Counsel", CBAO Seminar
- November Speaker, "Ontario's New Rules of Civil Procedure", The Canadian Bar

Association-Ontario, Young Lawyers' Division Dinner Meeting

- November "Ontario's New Rules of Civil Procedure: What Insurers Ought to Know and Do Before January 1, 1985", Canadian Underwriter Magazine
- November "TBDF and Record Retention in the Canadian Insurance Industry", 2 Canadian Computer Law Reporter 6; republished in Canadian Underwriter Magazine, June 1985
- July "Product Liability - The Expanded Duty to Warn", 5 Adv. Quar. 253
- 1983
- September "Basic Evidence", Chairperson, CBAO Seminar

APPENDIX A: REPORTED DECISIONS**2009**

Campos v. Sun Life Assurance Co., 2009 CanLII 43186 (S.C.J.)

Carmen Alfano Family Trust v. Piersanti, 2009 CanLII 32275 (S.C.J.)

Cummings v. Solutia SDO Ltd., [2009] O.J. No. 2618 (C.A.)

Speers Estate v. Readers Digest Assn. (Canada) ULC, [2009] O.J. No. 2332 (S.C.J.)

Russo v. John Doe, [2009] O.J. No. 1481 (C.A.)

Alfano v. Piersanti, [2009] O.J. No. 1224, 2009 CanLII 12799 (S.C.J.)

Alfano v. Piersanti, [2009] O.J. No. 924, 2009 CanLII 9462 (S.C.J.)

2008

Jeffery v. London Life Insurance Company, [2008] O.J. No. 5395, 69 C.C.L.I. (4th) 231, 2008 CarswellOnt 8057 (S.C.J.)

Gold v. Puslinch, [2008] O.J. No. 3970, 2008 CarswellOnt 5927, 2008 CanLII 52310 (S.C.J.)

Cummings v. Solutia SDO Ltd., [2008] O.J. No. 4427 (S.C.J.)

Jeffery v. London Life Insurance Company, [2008] O.J. No. 3428, 2008 CarswellOnt 5169, CanLII 43772 (Div.Ct.)

Cummings v. Solutia SDO Ltd., [2008] O.J. No. 3315, 2008 CarswellOnt 5168 (S.C.J.)

Cummings v. Solutia SDO Ltd., [2008] O.J. No. 3259, 2008 CarswellOnt 4922 (S.C.J.)

Russo v. John Doe, [2008] O.J. No. 2230 (S.C.J.)

Canada (Attorney General) v. Reliance Insurance Co. (2008), C.C.L.I. (4th) 220, 40 C.B.R. (5th) 292, 165 A.C.W.S. (3d) 66, [2008] O.J. No. 795, 2008 CarswellOnt 1118 (S.C.J.)

Jeffery v. London Life Insurance Co. (2008), 89 O.R. (3d) 686, 54 C.P.C. (6th) 31, 3159 C.C.L.I. (4th) 165, 165 A.C.W.S. (3d) 784, [2008] O.J. No. 837, 2008 CarswellOnt 1145, CanLII 8426 (S.C.J.)

Puhl v. Katz Group Canada Ltd. et al (2008), 63 C.C.E.L (3d) 71, 64 C.C.P.B. 163,

163 A.C.W.S. (3d) 75, [2008] O.J. No. 66, 2008 CanLII 433 (S.C.J.)

2007

E.S.G. Bolton Ltd. v. Bank of Nova Scotia, 2007 CarswellOnt 4384 (S.C.J.)

Canada (Attorney General) v. Reliance Insurance Co. (2007), 87 O.R. (3d) 42, 36 C.B.R. (5th) 273, 54 C.C.L.I. (4th) 92, 160 A.C.W.S. (2d) 980, [2007] O.J. No. 3830, 2007 CarswellOnt 6391 (S.C.J.)

Gardner v. General Motors of Canada Limited (2007), A.C.W.S. (3d) 905, [2007] O.J. No. 5142, 2007 CarswellOnt 8642 (S.C.J.)

2006

473807 Ontario Ltd. v. TDL Group Ltd. (2006), 271 D.L.R.(4th) 636, 47 R.P.R. (4th) 1, 149 A.C.W.S.(3d) 1123, [2006] O.J. No. 3050, 2006 CarswellOnt 4596 (C.A.)

1482111 Ontario Inc. v. 2029861 Ontario Limited (2006), 153 A.C.W.S. (3d) 445, [2006] O.J. No. 4768, 2006 CarswellOnt 7574 (S.C.J.)

1460904 Ontario Inc. v. MDG Computers Canada Inc. (2006), 152 A.C.W.S. (3d) 909, [2006] O.J. No. 4390 (S.C.J.)

Jeffery v. London Life Insurance Company (2006), 151 A.C.W.S. (3d) 580, [2006] O.J. No. 4000 (S.C.J.)

2005

Holmes v. London Life Insurance Company (2005), 144 A.C.W.S. (3d) 611, [2005] O.J. No. 5523 (S.C.J.)

Brady v. Lamb (2005), 78 O.R. (3d) 680, 205 O.A.C. 253, 30 C.C.L.I. (4th) 1, 144 A.C.W.S.(3d) 460, [2005] O.J. no 5403, 2005 CarswellOnt 7280 (C.A.)

The Second Cup Ltd. and John Delutis v. Kawkaban Corporation (2005), 260 D.L.R.(4th) 352, 202 O.A.C. 367, 16 C.P.C. (6th) 178, 142 A.C.W.S. (3d) 936, 2005 CarswellOnt 4777 (Div.Ct)

Representation of City of Toronto Senior Financial Analyst at Toronto Computer Leasing Inquiry

Chujun Gu, China Sun Group and Greencool Canada Inc. v. Tai Foong

International Ltd., Tai Foong Investments Ltd., David Lam, Robert Fu and Gu Cooling Systems Ltd. (2005), 139 A.C.W.S.(3d) 23, [2005] O.T.C.354, [2005] O.J. No. 1864 (S.C.J.)

Bridgewood Building Corp. et al v. Lombard General Insurance Company of Canada (2005), 7 B.L.R.(4th) 46, 26 C.C.L.I.(4th) 93, 46 C.L.R.(3d) 139, [2005] O.J. No. 2083, 2005 CarswellOnt 2081 (S.C.J.)

473807 Ontario Limited v. The TDL Group Ltd. (2005), 30 R.P.R. (4th) 1, 137 A.C.W.S.(3d) 1036, [2005] O.T.C 157, [2005] O.J. No 871 (S.C.J.)

Knight et al v. Sloan (2005), 194 O.A.C. 62, 136 A.C.W.S. (3d) 960, [2005] O.J. No 242 (C.A.)

2004

Soriano et al v. Palacios and Wawanesa Mutual Insurance Company (2004), 130 A.C.W.S. (3d) 1107, [2004] O.T.C.443, [2004] O.J. No. 2178 (S.C.J)

Mississauga (City of) v. Erin Mills Corporation Limited et al (2004), 71 O.R. (3d) 397, 188 O.A.C. 133, 50 M.P.L.R.(3d) 1, 132 A.C.W.S.(3d) 580, [2004] O.J. No. 2690 (C.A.)

Ahenakew v. MacKay (2004), 117 C.R.R.(3d) 374, 118 C.R.R.(2d)373, 131 A.C.W.S.(3d) 24, [2004] O.J. No. 1483 (S.C.J.)

Ahenakew v. MacKay (2004), 71 O.R.(3d) 130, 241 D.L.R.(4th) 314, 187 O.A.C. 162, 131 A.C.W.S.(3d) 581, [2004] O.J. No. 2318 (C.A.), aff'g (2003), 68 O.R.(3d) 277, 235 D.L.R. (4th) 371, [2003] O.J. No. 4821, 2003 CarswellOnt 4930 (S.C.J.), additional reasons at [2004] O.J. No. 1483

TDL Group Ltd. v. 1158631 Ontario Ltd. (2004), 30 R.P.R.(4th) 17, 134 A.C.W.S. (3d) 615, [2004] O.J. No. 4202 (C.A.), aff'g [2003] O.T.C. 216 , (2003) 8 R.P.R. (4th) 201, [2003] O.J. No. 964, 2003 CarswellOnt 961 (Ont. S.C.J.)

Celanese Canada Inc. v. Murray Demolition Corp. (2004), 69 O.R.(3d) 632, 237 D.L.R.(4th) 516, 183 O.A.C. 296, 46 C.P.C. (5th) 285, 128 A.C.W.S (3d) 1192, [2004] O.J. No. 372 (Div.Ct)

2003

Arbitration Committee Panel Decision, (12/03/03) re: P.C. Party of Canada and The Honourable S. Stevens et al

Celanese Canada Inc. v. Murray Demolition Corp. (2003), 69 O.R. (3d) 618, [2003] O.J. No. 4211, 2003 CarswellOnt 4146 (S.C.J.), additional reasons at 2003 CarswellOnt 4147, (2003) 46 C.P.C. (5th) 281, [2003] O.J. No. 4212 (S.C.J.), rev'd (2004), 69 O.R. (3d) 632, [2004] O.J. No. 372 (Div. Ct.)

Gu v. Tai Foong International Ltd. (2003), 168 O.A.C. 47 (2003), 30 C.P.C. (5th) 260, 120 A.C.W.S. (3d) 128, [2003] O.J. No. 264, 2003 CarswellOnt 232 (C.A.)

2002

Murray v. TDL Group Ltd., [2002] O.T.C. 1024, [2002] O.J. No. 5095, 2002 CarswellOnt 4474 (S.C.J.)

Oldfield v. Transamerica Life Insurance Company of Canada, [2002] S.C.J. No. 23, 2002 SCC22, 210 D.L.R. (4th) 1, 59 O.R. (3d) 160 (note), [2002] I.L.R. I-4058, 284 N.R. 104, 156 O.A.C. 310, 35 C.C.L.I. (3d) 165, 2002 CarswellOnt 724, 2002 CarswellOnt 725 (S.C.C.)

Attorney General of Ontario v. Holly Big Canoe et al (2002), 62 O.R. (3d) 167, 220 D.L.R.(4th) 467, 167 O.A.C 125, [2002] O.J. No 4596 (C.A.)

2001

TDL Group et al v. 1060284 Ontario Ltd., [2001] O.T.C. 188, [2001] O.J. No. 1035, 2001 CarswellOnt 881 (S.C.J.)

Tembec Industries Inc. v. Lumberman's Underwriting Alliance et al (2001), 52 O.R. (3d) 334, 25 C.C.L.I. (3d) 289, [2001] I.L.R. I-3944, 2001 CarswellOnt 75 (S.C.J.)

Gu et al v. Tai Foong International Ltd., [2001] O.J. No. 2962, 2001 CarswellOnt 2645 (S.C.J.)

Gu et al v. Tai Foong International Ltd., (2001) 5 C.P.C. (5th) 187, [2001] O.J. No. 113, 2001 CarswellOnt 91, [2001] O.J. No. 113 (S.C.J.)

TDL Group et al v. 1060284 Ontario Limited et al, [2001] O.J. No. 3614, 150 O.A.C. 354, 2001 CarswellOnt 3304 (Div. Ct.)

TDL Group et al v. 1060284 Ontario Limited et al, [2001] O.J. No. 1034, [2001] O.T.C. 187 (S.C.J.)

TDL Group Ltd. et al v. Regional Municipality of Niagara (2001), 202 D.L.R. (4th) 29, 55 O.R. (3d) 1, 21 M.P.L.R. (3d) 1, 148 O.A.C. 39, 74 L.C.R. 1, 18 M.V.R. (4th) 1,

[2001] O.J. No. 3017, 2001 CarswellOnt 2655 (Ont. C.A.)

TDL Group Ltd. et al v. Regional Municipality of Niagara (2001), 21 M.P.L.R. (3d) 7, 74 L.C.R. 1 at 2, [2001] O.T.C. 46, [2001] O.J. No. 267, 2001 CarswellOnt 216 (Ont. S.C.J.); add'l reasons [2001] O.J. No. 1013, 2001 CarswellOnt 834 (Ont. S.C.J.)

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Murphy v. Lloyd's of London (2000), 137 O.A.C. 10, [2001] I.L.R. I-3910, [2000] O.J. No. 3927, 2000 CarswellOnt 4119 (C.A.)

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Johnson v. National Life Assurance Co. of Canada (1992), 7 C.P.C. (3d) 20, [1992] O.J. No. 164, 1992 CarswellOnt 438 (Ont. Ct. J. (Gen. Div.)); ref'd leave to appeal (1992), 7 C.P.C. (3d) 20n, [1992] O.J. No. 164, (Ont. Ct. J. (Gen. Div.))

Plastyle Inc. v. CKF Inc. (1992), 8 B.L.R. (2d) 210, 16 C.C.L.T. (2d) 55, [1992] O.J. No. 3889, 1992 CarswellOnt 153 (Ont. Ct. J. (Gen. Div.)); aff'd (1993), 8 B.L.R. (2d) 210n, 16 C.C.L.T. (2d) 55n, [1993] O.J. No. 3542 (C.A.)

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Sandhu v. Ontario (1990), 49 C.P.C. (2d) 298, [1990] O.J. No. 1753, 1990 CarswellOnt 437 (Ont. Ct. J. (Gen. Div.))

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1987

Burke v. Kongskilde Ltd. et al (1987), 21 C.P.C. (2d) 36, [1987] O.J. No. 2372, 1987 CarswellOnt 472 (H.C.J.)

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Desjardine v. Neron (1987), 24 C.P.C. (2d) 311, [1987] O.J. No. 2355, 1987 CarswellOnt 552 (Ont. S.C.) (Master)

1985

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Guarantee Company of North America v. Morris et al (1985), 50 C.P.C. 122, [1985] O.J. No. 1885, 1985 CarswellOnt 559 (H.C.J.)

Schwartz et al v. De Pauw (1985), 16 O.A.C. 66, 1985 CarswellOnt 1419 (C.A.)

1984

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Slater Steel Industries Limited v. L.C.E. Combustion Systems Inc. et al; National Annealing Box Company (third party) (1984), 46 O.R. (2d) 45, 8 D.L.R. (4th) 254, 43 C.P.C. 259, 1984 CarswellOnt 383 (H.C.J.)

Anastasio v. Cutruzzola (1984), 33 R.P.R. 56, 1984 CarswellOnt 588 (Ont. Co. Ct.)

Apa v. McKay, [1984] O.J. No. 1356 (H.C.J.)

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Royal Bank v. Barringer (1983), 44 O.R. (2d) 506, 38 C.P.C. 196, 1983 CarswellOnt 515 (O.S.C. [Master's Chambers])

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NOTICE OF CERTIFICATION RE: IMPARK VIOLATION FEES CLASS ACTION

Read this notice carefully as it may affect your legal rights.

PURPOSE OF THIS NOTICE

This notice is to all persons who parked a vehicle or whose vehicle was parked at an Impark parking lot and who were charged and paid violation fees to Impark.

In 2009, Stephanie Graham and Angela Miceli commenced a proposed class proceeding against Imperial Parking Canada Corporation carrying on business as Impark in the Superior Court of Justice, Court File No. CV-09-00379652-00CP. The plaintiffs allege that violation fees charged by Impark are improper and contravene provisions of the *Consumer Protection Act*.

On _____, Mr. Justice Perell certified this action as a class proceeding. This notice does not mean that that Court has made a decision as to the likelihood of recovery by the plaintiffs, or as to the merits of the claims or defences asserted by either side. This notice is provided because you a member of the class whose rights may be affected by the lawsuit.

COMMON ISSUES

At present, the class proceeding will determine the following common issues:

Parking Agreements

- a) are parking agreements "consumer agreements" as defined in section 1 of the *Consumer Protection Act*, 2002, S.O. 2002, c.30, Schedule A ("OCA")?
- b) do parking agreements constitute "future performance agreements" as defined in section 1 of the *OCA*?
- c) if so, does the potential payment obligation under parking agreements exceed \$50.00?
- d) do parking agreements contravene the requirements of section 5 of the *OCA*?
- e) do parking agreements contravene the requirements of section 22 of the *OCA*?
- f) do parking agreements contravene the requirements of sections 24 and 25 of Ontario Regulation 17/05 ("O. Reg. 17/05") made pursuant to the *OCA*?
- g) has Impark engaged in unfair practices in contravention of sections 14, 15 and 17 of the *OCA*?
- h) are parking agreements rescinded pursuant to section 18 of the *OCA*, or alternatively, are parking agreements not binding pursuant to section 93 of the *OCA*?
- i) are class members entitled to relief from forfeiture in connection with parking agreements, pursuant to section 98 of the *Courts of Justice Act*, R.S.O. 1990 c. 43 as amended?

Violation Fees

- j) do violation fees constitute illegal charges and/or payments pursuant to section 98 of the *OCA*?
- k) are violation fees penalties at common law?
- l) has Impark been unjustly enriched via funds received as violation fees?
- m) if so, have class members suffered a corresponding deprivation through such payment of violation fees?
- n) if so, is there a juristic reason for violation fees paid to be retained by Impark?
- o) are violation fees received by Impark held in trust for the benefit of class members?

Damages

- p) if parking agreements contravene the *OCA* and/or its regulations, is Impark liable to class members for damages?
- q) if so, in what amount?
- r) if violation fees contravene the *OCA* and/or are penalties, or if Impark has been unjustly enriched through receipt of violation fees, is it liable to class members for damages?
- s) if so, in what amount?
- t) does the conduct of Impark warrant imposition of punitive damages?
- u) if so, in what amount?
- v) if violation fees contravene the *OCA* and/or are penalties, or if Impark has been unjustly enriched through receipt of violation fees, must Impark

provide an accounting of all proceeds received through its collection of violation fees?

- w) if violation fees contravene the *OCA* and/or are penalties, or if Impark has been unjustly enriched through receipt of violation fees, should this Court impose a permanent injunction restraining Impark from collecting further violation fees?

PARTICIPATION AND EXCLUSION FROM THE CLASS

If you wish to remain a member of the class, you do not have to do anything at this time. If you wish to obtain more information about your rights as a class member, you may contact the solicitors for the representative plaintiffs as listed below.

If you wish to exclude yourself from the class proceeding ("opt-out") you must deliver written notice on or before _____, 2010 to the opt-out administrator:

- (a) by mail to: Nicholas Mastroluisi, C.A.,
Pettinelli, Mastroluisi^{LLP}
6th Floor, 1 James Street South
Hamilton, ON L8P 4R5
- (b) by fax to: 905-522-6574
- (c) by e-mail to: nickm@petmas.ca

The written opt-out notice must be signed by the class member or his/her authorized representative and include the class member's name, address, telephone number, and birth date and the statement that he/she is opting-out of the class proceeding.

Any class member who does not opt-out will be bound by the result in the action whether favourable or not. You must opt-out if you wish to proceed with individual legal action.

FINANCIAL CONSEQUENCES

The class proceeding will deal with the common issues as outlined above. No class member will be liable for costs with respect to the determination of the common issues. Once the Court has determined the common issues, it may be necessary for individual members of the class to participate in individual proceedings to determine issues which are not common to the Class in order to establish their claims. If this is necessary, each member of the class may have to bear costs of such individual proceedings and, if unsuccessful, could be liable to pay a portion of the defendant's costs incurred with respect to such individual proceedings.

Class members may be entitled to receive financial compensation from the defendant if the class proceeding is successful.

The representative plaintiffs have entered into agreements with class counsel whereby fees related to the trial of the common issues will be payable only in the event of success in the class proceeding. Any fees charged by class counsel must be approved by the Court.

ADDITIONAL INFORMATION

Questions for class counsel should be directed by telephone or in writing as follows:

SCARFONE HAWKINS^{LLP} Barristers & Solicitors One James Street South, 14 th Floor P.O. Box 926, Depot 1 Hamilton, Ontario L8N 3P9	BATES BARRISTERS 34 King Street East, 12 th Floor Toronto, Ontario M5C 2X8
DAVID THOMPSON thompson@shlaw.ca Tel : 905-523-1333 Fax: 905-523-5878	PAUL BATES pbates@batesbarristers.com 416-869-9898 Fax: 416-869-9405
	Lawyers for the Plaintiffs.

Additional information regarding the action can be found at www.classactionlaw.ca and at www.shinehofflaw.ca

This notice has been approved by the Superior Court of Justice.
Questions about this notice should NOT be directed to the court.

APPENDIX "D"

PETTINELLI, MASTROLUISI LLP
CHARTERED ACCOUNTANTS

TELEPHONE (905) 522-6555
FACSIMILE (905) 522-6574

6TH FLOOR
ONE JAMES STREET SOUTH
HAMILTON, ONTARIO
L8P 4R5

July 24, 2009

SCARFONE HAWKINS LLP
Barristers and Solicitors
One James Street South
14th Floor
Hamilton, Ontario
L8P 4R5

Attention: David Thompson

Dear Sir:

**RE: STEPHANIE GRAHAM AND ANGELA MICELI v. IMPERIAL PARKING CANADA
CORPORATION CARRYING ON BUSINESS AS IMPARK
COURT FILE NO. CV-09-00378652-00CP. COMMENCED AT TORONTO**

Thank you for your recent inquiry.

We would be pleased to act as opt-out administrator in connection with the above-noted case.

We understand that if appointed by the Court to so act, we will be required to receive any opt-out notices by a fixed Court-appointed date, pursuant to a Court-approved Notice.

We understand as well that we will be required to report to the Court the names and addresses of the persons who have opted-out of the class proceeding within a specified time window (usually 30 days) after the fixed date for delivery of Opt-out Notices. We have no objection to a copy of this correspondence being filed with the Court as evidence of our willingness to act.

Thank you for considering us with respect to this matter.

We look forward to hearing from you.

Yours very truly,



Nicholas Mastroluisi
NM/sk

31 STEPHANIE GRAHAM et al.
Plaintiffs

-and- IMPERIAL PARKING CANADA CORPORATION, carrying on
business as IMPARK
Defendant

Court File No. CV-09-00379652-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF STEPHANIE GRAHAM

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Fax: 416-869-9405

Lawyers for the plaintiffs

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

STEPHANIE GRAHAM AND ANGELA MICELI

Plaintiffs

- and -

**IMPERIAL PARKING CANADA CORPORATION
carrying on business as IMPARK**

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992, S.O. 1992, c.6, as amended*

AFFIDAVIT OF ANGELA MICELI

I, **ANGELA MICELI**, of the City of Toronto, in the Province of Ontario, **MAKE**

OATH AND SAY:

1. I am a plaintiff in this action and, as such, have personal knowledge of the facts set out in this affidavit, except where such facts are based upon information and belief, in which case I have stated the source of the information. I believe all that is set out in this affidavit to be true and accurate.

MY PERSONAL SITUATION

2. On March 11, 2009, my son, Joey Miceli ("Joey"), entered onto an Impark parking lot at 21 Four Seasons Place, Toronto and paid Impark a fee to park through a mechanical parking voucher dispenser. The daily maximum parking fee at the lot was \$5.00. Joey received a parking voucher after making payment.

The parking voucher contained very little information identifying only the amount paid, parking time allowed, and that the parking voucher had to be displayed on the dashboard of the vehicle. The parking voucher did not set-out any violation fee amount if Joey overstayed at the lot. Attached as exhibit "A" is a copy of the parking voucher, number 36825481, purchased for \$2.00 at 10:27 allowing parking to 11:57.

3. Joey overstayed at the lot. Upon return to the vehicle, a violation notice on the vehicle notified him that a violation fee of \$68.90 was being charged by Impark. Joey had overstayed approximately 43 minutes at the parking lot. Attached as exhibit "B" is a copy of the violation notice, number 09E341191, which references the 11:57 expiry time on the voucher and the last 4 numbers of the parking voucher being 5481.
4. I subsequently received from Impark a statement notice demanding payment of the violation fee. I believe that I received the statement notice as registered owner of the vehicle licence plate. Attached as exhibit "C" is a copy of the statement notice dated April 21, 2009 referring to the violation of March 11, 2009 and violation notice number 09E341191.
5. I also received from Tacit Collections a demand for payment of \$68.90 in respect of an alleged parking violation that occurred on June 24, 2009 in respect of vehicle license number BBJ5682. I confirm that license number BBJ5682 is a plate registered in my name.

6. I further confirm that I have spoken with Joey who advised that he had parked our family van at 10 Four Seasons Place, Etobicoke on June 24, 2009. Attached as exhibit "D" is a copy of the Tacit Collections demand I received in the mail.
7. I have refused to make payment of the violation fees. I did not enter into parking agreements with Impark, nor am I responsible for any conduct which caused the violation fees, the violation notices or the statement notices.

REPRESENTATIVE PLAINTIFF

8. I am prepared to serve as a representative plaintiff in this proposed class proceeding.
9. I believe that I will fairly and adequately represent the Class and that I do not have an interest in conflict with the interests of other Class Members in respect of the common issues or in any other respect.
10. I understand that the main steps involved in prosecuting this action, in the event that it is certified by this Honourable Court as a class proceeding would involve the following:
 - (a) the action is commenced by Statement of Claim which is served upon the defendants, which step has already been completed;
 - (b) a motion is then brought before the Court seeking certification of the action as a class proceeding, this affidavit being sworn in support of such motion;

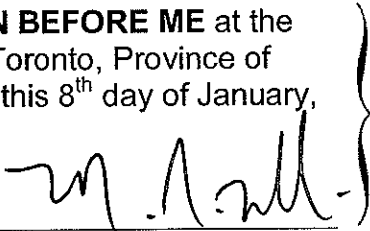
- (c) if the certification motion is successful, notice of the certification would be given to Class Members and Class Members would be given an opportunity to opt-out or remove themselves from the class action;
- (d) discovery of documents would occur including preparation of an affidavit of documents and production of all relevant non-privileged documentation;
- (e) examinations for discovery would be conducted and that would include an examination for discovery of me as representative plaintiff, as well as representatives of the defendant;
- (f) conduct of a pre-trial conference conducted before a Judge of this Court in order to explore the possibility of settlement, narrow issues for trial and otherwise focus the parties on the requirements for trial;
- (g) a trial of the common issues;
- (h) further notice to the Class if individual participation is required;
- (i) distribution of judgment proceeds to Class Members, as directed by the Court, or distribution of settlement proceeds if the action is settled;
- (j) there may be appeals from the certification order, from other Court orders or from the judgment at the common issues trial;
- (k) a settlement could be reached at any stage, which settlement would require the approval of the Court in all respects.

11. I understand that in agreeing to seek and accept an appointment by the Court as a representative plaintiff, it is my responsibility to become familiar with the case and issues to be decided by the Court including:
- (a) reviewing the Statement of Claim;
 - (b) assisting in the preparation and execution of this affidavit filed in support of the motion for certification;
 - (c) to attend, if necessary, with my counsel for cross-examination on this affidavit;
 - (d) to assist in preparation and execution of an affidavit of documents listing documents I have or have had;
 - (e) to attend with my counsel for examination for discovery;
 - (f) to attend with my counsel at the trial of the common issues and give evidence regarding the case, if required;
 - (g) to receive briefings from and to instruct my counsel;
 - (h) to express, in some circumstances, my opinions on strategy to my counsel;
 - (i) to express my opinion to counsel and to the Court if settlement positions are to be formulated;

- (j) to express my opinion to counsel and to the Court if offers to settle are made;
- (k) to assist in preparation and execution of an affidavit in support of any Court approval of a settlement reached;
- (l) to communicate with Class Members as may be required.

12. I have retained and instructed Scarfone Hawkins ^{LLP} and Bates Barristers, participated in many discussions, assisted in the preparation of the Statement of Claim, aided in the drafting of this affidavit and have met with my counsel.

SWORN BEFORE ME at the
City of Toronto, Province of
Ontario this 8th day of January,
2010




Commissioner for Taking Affidavits
(or as may be)



ANGELA MICELI

MATTHEW G. MOLOCI
Barrister, Solicitor, Notary Public

This is "Exhibit A" referred to in the Affidavit of Angela Miceli
sworn January 8th, 2010



Commissioner for Taking Affidavits (or as may be)

MATTHEW G. MOLOCI
Barrister, Solicitor, Notary Public

■
DISPLAY THIS SIDE UP ON DASHBOARD

EXPIRATION DATE EXPIRATION TIME
11/03/09 11:57

AMOUNT PAID
\$ 2.00 23320280 10:27

DETACH RECEIPT FROM TICKET

DATE ISSUED TIME ISSUED AMOUNT PAID
11/03/09 10:27 \$ 2.00

CREDIT CARD NUMBER



CHARGES ARE FOR THE USE OF THE PARKING SPACE ONLY.
WE WILL NOT BE RESPONSIBLE FOR LOSS OR DAMAGE TO
CARS OR CONTENTS, HOWEVER CAUSED, INCLUDING BUT NOT
LIMITED TO FIRE, THEFT OR COLLISION

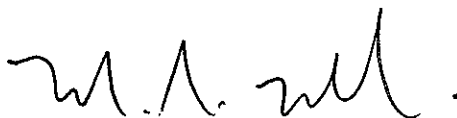
NON TRANSFERABLE 36825481

GST# 881490627 RT001



RECEIPT 36825481

This is "Exhibit B" referred to in the Affidavit of Angela Miceli
sworn January 8th, 2010



Commissioner for Taking Affidavits (or as may be)

MATTHEW G. MOLOCI
Barrister, Solicitor, Notary Public

NOTICE

113

We, IMPERIAL PARKING CANADA CORPORATION, hereby notify you that you have parked on private property without displaying a valid pass or sufficient valid dispenser ticket(s), or have otherwise improperly parked, as detailed below

Violation #: 09E341191

Date issued (YY/MM/DD)	Time (HH:MM)	Patroller Number	
09/03/11	12:40	80	
License Plate No.	Exp. Yr.	Prov. State	Vehicle Make
1092WA	08	ON	FORD
Lot Code	Lot Location		
280	Burnhamthorpe Square		
Particulars			
Receipt Expired			
Parking Receipt/s Expired			
EXPE11:57 5481 PT			

**** PATROLLERS CANNOT CANCEL VIOLATIONS ****

PLEASE REMIT PAYMENT AS FOLLOWS:

NOTICE AMOUNT: = \$68.00

IF PAID WITHIN 7 DAYS: = \$39.59

The above amount(s) include(s) GST

PAYMENTS AND ENQUIRIES:

BY MAIL:

P.O. BOX 2141

STATION TERMINAL
VANCOUVER, BC, V6B 3T8

DO NOT MAIL CASH!

BY TELEPHONE

1-877-903-9933

BY INTERNET

WWW.IMPARK.COM

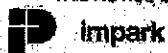
To pay by Visa or MasterCard please see reverse

Make Cheques payable to:

IMPERIAL PARKING CANADA CORPORATION



THIS NOTICE MUST ACCOMPANY PAYMENT



15599-045

EXPLANATION OF AMOUNT

The amount on this notice is set to cover lost revenue as well as the costs of patrol and preliminary collection.



THE LEGAL AUTHORITY TO CLAIM THE ABOVE AMOUNT AND/OR HAVE YOUR IMPROPERLY PARKED VEHICLE TOWED ARISES UNDER THE LAW OF CONTRACT AND THE LAW OF TRESPASS.

The above amount is a debt owing to Imperial Parking Canada Corporation and is claimed as an alternative to (or in certain circumstances, in addition to) having your vehicle towed and held for any applicable towing and storage charges.

If this amount remains unpaid for more than thirty (30) days, it will be forwarded to a debt collection agency for collection. We may also tow your vehicle from property managed by us and/or take legal action. Should this charge proceed to a debt collection agency, costs and interest will be added.

To Pay By Credit Card is Easy:

1. Complete the form below and mail to the address on the front of this notice.
2. Visit our website at www.impark.com

Credit Card Type:  

Notice #: _____ Plate #: _____

Cardholder Name: _____

Card No.: _____

Expiry Date: _____

Phone No.: _____

Signature: _____

By the issuance of my signature, I hereby authorize the amount set out on this notice to be charged to my credit card number as noted above.

SEP 14 11 56 AM '00



This is "Exhibit C" referred to in the Affidavit of Angela Miceli
sworn January 8th, 2010



Commissioner for Taking Affidavits (or as may be)

MATTHEW G. MOLOCI
Barrister, Solicitor, Notary Public

P.O. Box 2141
 Station Terminal
 Vancouver, BC V6B 3T8
 Telephone: 1-877-903-9933



2009/04/21
 License Number: 1092WA

Y40180 CTYNO 2451 x031(Y) 002451
MICELI ANGELA
24 WINDSOR RD
ETOBICOKE ON M9R 3G1



This statement has been issued by **Imperial Parking Canada Corporation (TOR)**. Listed below are certain instances in which your vehicle was parked on private property in contravention of the posted parking instructions.

The amount on this Statement is a debt owing to **Imperial Parking Canada Corporation (TOR)** and is set to cover lost revenues as well as the costs of patrol and preliminary collection. A Notice was placed on your vehicle at the time of the infraction, but the amount remains unpaid. If this amount remains unpaid for more than fourteen (14) days from the date of this statement, it will be referred to a debt collection agency for collection, at which time costs and interest will be added.

The legal authority to claim the amount due and/or have improperly parked vehicle towed arises under the law of contract and the law of trespass. Our right to claim this amount from owners of vehicles improperly parked on facilities managed by us has been confirmed by a Canadian Federal Court of Appeal decision.

DATE	NOTICE NO	VIOLATION PARTICULARS				AMOUNT
		LOT CODE	LOCATION	TIME	TYPE	
2009/03/11	09E341191	0280	10-21 Four Seasons Place	12:40	0002	\$68.90
		TOTAL				\$68.90

Explanation of Notice Types:

- 0 - Charges for unpaid parking on an attended lot.
- 1 - Failure to display valid parking receipt.
- 2 - Parking receipt expired.
- 3 - Expired meter.
- 4 - Restricted lot or parking area.
- 5 - Free parking time limit expired.
- 6 - Obstruction
- 7 - Failure to Display Pass

THIS IS YOUR FINAL NOTICE BEFORE COLLECTION

Detach Bottom Portion and Mail with Payment

Name: MICELI ANGELA
 License Number: 1092WA
 Notice(s): 09E341191
 Time(s): 12:40
 Amount(s): \$68.90
 Total Amount Due: \$68.90

To pay by cheque or money order:

AMOUNT ENCLOSED:

Imperial Parking Canada Corporation (TOR)
 P.O. Box 2141
 Station Terminal
 Vancouver, BC V6B 3T8
 Telephone: 1-877-903-9933

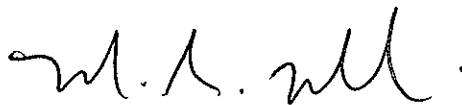
TO PAY BY CREDIT CARD

1. Fill out the information requested below.
 2. Include your credit card type, number and expiry date.
 3. Sign the authorization portion.
 4. Return completed form by mail to the address above.

Name: _____
 Credit Card No. _____
 Expiry Date: _____
 Amount Authorized: _____
 Signature: _____

By evidence of my signature, I do hereby authorize the amount above to be charged to my credit card account.

This is "Exhibit D" referred to in the Affidavit of Angela Miceli
sworn January 8, 2010

A handwritten signature in cursive script, appearing to read "M. G. Moloci".

Commissioner for Taking Affidavits (or as may be)

MATTHEW G. MOLOCI
Barrister, Solicitor, Notary Public

P.O. Box 2141, Stn. Terminal
Vancouver, BC V6B 3T8
Telephone: 1-888-331-7137

2009/09/08
License Number: BBS682

Y70760 CTYNO 3213 xx31(M) 003213

MICELI ANGELA
24 WINDSOR RD
ETOBICOKE ON M9R 3G1



The amount on this Statement is a debt owing to **Imperial Parking Canada Corporation** and has been forwarded to us for collection.

Our client has instructed us to pursue this debt vigorously. This could include contacting you by telephone or instructing our client's solicitor to proceed with civil action.

Listed below is a description of the notice(s):

DATE	NOTICE NO	TIME	LOT #	LOCATION	AMOUNT
2009/06/24	09E373773	16:06	0280	10 Four Seasons Pl.	\$68.90
AMOUNT DUE					\$68.90

This debt must be paid within 10 days in order to ensure that no further action is taken. Payment can be made by either cheque or money order made payable to Tacit Collections. If you have any questions or require additional information, contact our office at the above-noted number.

We may proceed with further action as outlined above if the outstanding notice(s) are not paid immediately.

Detach Bottom Portion and Return with your Payment

Name MICELI ANGELA
License Number: BBS682
Notice(s): 09E373773
Time(s): 16:06
Amount(s): \$68.90
Total Amount Due: \$68.90



To pay by cheque or money order:

AMOUNT ENCLOSED:

Tacit Collections
P.O. Box 2141
Station Terminal
Vancouver, BC V6B 3T8
Telephone: 1-888-331-7137

TO PAY BY CREDIT CARD

- Fill out the information requested below.
- Include your credit card type, number and expiry date.
- Sign the authorization portion.
- Return completed form by mail to the address above.

Name: _____
Credit Card No. _____
Expiry Date: _____
Amount Authorized: _____
Signature: _____

By evidence of my signature, I do hereby authorize the amount above to be charged to my credit card account.

STEPHANIE GRAHAM et al.
1
Plaintiffs

-and- IMPERIAL PARKING CANADA CORPORATION, carrying on
business as IMPARK
Defendant

Court File No. CV-09-00379652-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF ANGELA MICELLI

SCARFONE HAWKINS LLP
Barristers & Solicitors
One James Street South, 14th Floor
P.O. Box 926, Depot 1
Hamilton, Ontario
L8N 3P9

DAVID THOMPSON (LSUC# 28271N)
thompson@shlaw.ca
MATTHEW G. MOLOCI (LSUC# 40579P)
moloci@shlaw.ca
Tel: 905-523-1333
Fax: 905-523-5878

BATES BARRISTERS
34 King Street East, 12th Floor
Toronto, Ontario
M5C 2X8

PAUL BATES (LSUC# 22619D)
pbates@batesbarristers.com
BERNADETTE CHUNG
(LSUC# 52498A)
bchung@batesbarristers.com
Tel: 416-869-9898
Fax: 416-869-9405

Lawyers for the plaintiffs

Court File No. CV-09-00379652-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

STEPHANIE GRAHAM AND ANGELA MICELI

Plaintiffs

- and -

**IMPERIAL PARKING CANADA CORPORATION
carrying on business as IMPARK**

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992, S.O. 1992, c.6, as amended***AFFIDAVIT OF THOMAS G. W. TELFER**

I, **THOMAS G.W. TELFER**, of the City of London, of Middlesex County, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an Associate Professor of Law with tenure at The University of Western Ontario Faculty of Law. My teaching and research expertise lies in commercial law, bankruptcy and insolvency law, contracts, and consumer law. I have written extensively on these topics and presented numerous papers in Canada and internationally. At The University of Western Ontario Faculty of Law, I am currently the Cassels Brock LLP Faculty Fellow in Contract Law.
2. I completed my LLB at the The University of Western Ontario in 1988 (with distinction), my LLM at Duke University in 1992, and my SJD at the University of Toronto in 1999. I was called to the Bar of Ontario in 1990.

3. Before joining the University of Western Ontario, I was a member of the Faculty of Law at the University of Auckland from 1993 to 2001. While a faculty member at the University of Auckland, I provided *pro bono* advice on a consumer law case that went before the New Zealand Court of Appeal. Since joining the Faculty of Law at The University of Western Ontario in 2002, I have taught courses in the LLB program including bankruptcy and insolvency law, commercial law, and contracts. I have also supervised students in the LLM program. I have also served as an external examiner for LLM dissertations at Osgoode Hall Law School.

4. I am a member of the editorial board of the *Annual Review of Insolvency Law* and am the Specialist Editor in Insolvency Law for the *Canadian Business Law Journal*. I also serve as the Book Review Editor for the *Canadian Business Law Journal*. I am the co-editor of *International Perspectives on Consumers' Access to Justice* (Cambridge University Press, 2003). I am the co-author of *Bankruptcy and Insolvency Law: Cases, Texts and Materials*, 1st Ed. (Emond Montgomery, 2003) and *Bankruptcy and Insolvency Law: Cases, Texts, and Materials*, 2nd Ed. (Emond Montgomery, 2009).

5. In 2002, I was also a co-author of an academic submission on Bill 180, which led to the adoption of the Ontario *Consumer Protection Act, 2002*, to the Ontario Legislative Assembly and to the Committee on Finance and Academic Affairs.

6. Attached as **Exhibit "A"** is a copy of my current curriculum vitae.

7. I have been asked by plaintiffs' counsel to provide an overview of the cause of action advanced by the plaintiffs and the underlying facts in relation to the issue of whether the "violation fees" charged by the defendant, Imperial Parking Canada Corporation ("Impark"), constitute penalties. I have also been asked to consider whether the "violation fees" charged by Impark can be resolved on a common basis for all class members. I base my statements in this affidavit on my study of the Statement of Claim in this action, the affidavit of Gordon Craig sworn September 13, 2004 in the matter between *Imperial Parking Canada Corporation v. City of Toronto*, and my review and knowledge of the law relating to penalties. Attached to this my affidavit as **Exhibit "B"** is a true copy of the affidavit of Gordon Craig sworn September 13, 2004.

OVERVIEW OF THE LAW OF PENALTIES

8. While a provision in a contract may stipulate in advance a sum due on default, such a provision is not always enforceable. Whether such clause is enforceable depends on whether the stipulated sum is found to be liquidated damages or a penalty. While liquidated damages are enforceable, penalties are not.
9. Traditionally, the common law in Canada has focused on whether the contractual clause in question reflects a genuine pre-estimate of damages. The traditional definition of liquidated damages is that they are a genuine pre-estimate of damages. The traditional definition of penalties is that they are an amount in excess of the greatest loss that could possibly flow from the breach (*Dunlop Pneumatic Tyre Co. v. New Garage* [1915] A.C. 79). The law does not enforce

penalties because they are not a genuine pre-estimate of damages, and because they are intended to secure performance of the contract.

10. However, Canadian courts' approach to identifying penalties has shifted to emphasize inequality of bargaining power between the parties as a determining factor of whether a sum due on default is a penalty. Thus, principles such as unconscionability or oppression now play an important role in determining whether a stipulated sum is a penalty and therefore unenforceable.
11. In *J.G. Collins Insurance Agencies Ltd. v. Elsely*, [1978] 2 S.C.R. 916 at p.937, Justice Dickson held that penalties should be struck down if oppressive, not merely because characterized as a penalty.
12. Courts in Canada no longer rigidly adhere to a mechanical calculation of the amounts payable under a contractual clause to determine whether there is a genuine pre-estimate of damages (liquidated damages) that should be enforced or some amount that exceeds the genuine pre-estimate of damages (a penalty), that should not be enforced.
13. Professor Cassels and Elizabeth Adjin-Tettey have commented that "courts should not apply mathematical rules to test the fairness of stipulated damages clauses" (Cassels and Adjin-Tettey, *Remedies: The Law of Damages*, p. 457).
14. Current jurisprudence in Canada regarding how penalties should be identified and whether courts should determine when to enforce a provision in a contract that stipulates in advance a sum due on default focus on the following factors:

- a) the circumstances in which the contract was entered into; and
 - b) the nature of the relationship between the parties at the time the contract was entered into; and
 - c) inequality of bargaining power; and
 - d) whether the transaction was unconscionable or oppressive.
15. There is a line of case law stemming from *H.F. Clarke Ltd. v. Thermidaire*, [1976] 1 S.C.R. 319, which suggests that a court should determine whether to enforce payment of a sum due on default by taking into account the consequences of the breach.
16. However, I note that the Supreme Court of Canada's ruling in *Elsely* is the more recent of the two Supreme Court of Canada cases. The Supreme Court of Canada's focus in *Elsely* is on oppression and unconscionability to set aside penalties in a contract. Unconscionability requires an assessment of the circumstances existing at the time the contract was entered into, not the consequences of the breach.
17. *Thermidaire* has also been criticized by other academic commentators, including Cassels and Adjin-Tettey referenced above and Waddams (Waddams, *The Law of Contracts*, 5th ed. ¶453-¶455), who argues that unconscionability should be the guiding principle in determining whether to uphold or strike down a contractual term requiring payment of a sum due on default.

THE CONSUMER CONTEXT

18. Consumer protection legislation recognizes that consumers in the context of standard form agreements often do not read such agreements and will not, and cannot, spend much time negotiating such agreements. Section 5(1) of the Ontario *Consumer Protection Act, 2002* ("CPA") explicitly recognizes this concern by stipulating that if a supplier is required to disclose information under the CPA, such disclosure "must be clear, comprehensible and prominent." Elizabeth L. McNaughton and Parna Sabiet-Stephenson, in *A Guide to the Consumer Protection Act* states that in respect of section 5(1) of the CPA, "including such mandatory information in the 'fine print' of a document will not satisfy the disclosure obligations of the CPA." Section 5(2) reinforces the importance of disclosure. Section 5(2) provides "[i]f a supplier is required to deliver information to a consumer under this Act, the information must, in addition to satisfying the requirements in subsection (1), be delivered in a form in which it can be retained by the consumer." Attached to this my affidavit as **Exhibit "C"** is a true copy of this excerpt from *A Guide to the Consumer Protection Act* by Elizabeth L. McNaughton and Parna Sabiet-Stephenson.

19. The policy rationale expressed by Tim Hudak, then the Minister of Consumer and Business Services during legislative debates on October 28, 2002 regarding the CPA, also recognizes that consumers do not often read contracts, particularly the fine print:

Importantly as well, it would require clear disclosure. There's always a good piece of advice that I think we say over and over to

constituents, to our own families and to ourselves: read the fine print. Many unscrupulous operators hide important information in that fine print or use ambiguous language that is very hard to interpret. The proposed Consumer Protection Act, 2002, also known as CP21, would help combat this by requiring that information to be disclosed clearly and prominently and not hidden in the fine print.

Attached to this my affidavit as **Exhibit "D"** is a true copy of this excerpt from the legislative debates concerning the CPA.

20. Section 11 of the *CPA* also underscores the importance of disclosure. Any ambiguity that allows for more than one interpretation of a consumer agreement shall be interpreted to the benefit of a consumer. Further, section 11 also provides where the supplier is required to disclose any information under the *CPA*, any ambiguity arising under that disclosure is interpreted to the consumer's benefit.

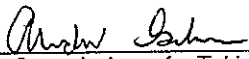
PARKING AGREEMENTS WITH IMPARK

21. All members of the proposed Class in this litigation who entered into parking agreements with Impark are consumers as defined by the *CPA*. It is common to all members of the Class that there was an inequality of bargaining power and an inability to negotiate the terms of the contract with Impark at the time the contracts were entered into.
22. Consumers in parking transactions with Impark were and are not in a position to influence the terms of the contract by virtue of the fact that the contracts are all standard in form. Standard form contracts are presented on a "take it or leave it" basis with no ability on the part of the consumer to negotiate the terms. In effect,

there is a procedural defect in the formation of the contract at the time the contract is entered into. All of the contracts at issue are contracts of adhesion. This is a marker of unconscionability that is common to all members of the Class in the transactions at issue in this litigation.

- 23. The allegation that "violation fees" are penalties and therefore should not be enforced can be determined on a common basis amongst all Class Members as all were in the same unequal bargaining position *vis-à-vis* Impark and could not negotiate any changes to the terms of the parking agreements.

SWORN BEFORE ME at the City of London, Province of Ontario this 23 day of December, 2009.



 Commissioner for Taking Affidavits
 (or as may be)

Andrew William Graham, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law
Expires August 12, 2012.



THOMAS G.W. TELFER

This is Exhibit "A" referred to in the Affidavit of Thomas G.W. Telfer
sworn December 23, 2009.



Commissioner for Taking Affidavits

Andrew William Graham, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law
Expires August 12, 2012.

CURRICULUM VITAE

December 11, 2009

1. **NAME:** THOMAS G.W. TELFER B.A. (Hons.), LL.B., LL.M., S.J.D.
RANK: Associate Professor: ttelfer@uwo.ca

2. **EDUCATION:**

Degree	University	Department	Year
S.J.D.	University of Toronto	Faculty of Law	1999
LL.M.	Duke University	School of Law	1992
Member, Law Society of Upper Canada		Ontario Bar	1990
LL.B.	University of Western Ontario	Faculty of Law	1988
<u>(With distinction 1988)</u>			
B.A. (Hons.)	University of Western Ontario	History	1985

3. **EMPLOYMENT HISTORY:**

Date	Rank and Position	Department	Institution
2002-	Associate Professor	Faculty of Law	University of Western Ontario
2008 (Aug)	Visiting Professor	Faculty of Law	University of Auckland
2004(Jan)	Teaching Fellow	Faculty of Law	Victoria Univ. of Wellington
2008 (Aug)	Visiting Professor	Faculty of Law	University of Auckland
2003 (spring)	Visiting Professor	Faculty of Law	University of Toronto
2003 (fall)	Visiting Professor	Faculty of Law	University of Toronto
1998-2001	Senior Lecturer	Faculty of Law	University of Auckland
1994-1997	Lecturer	Faculty of Law	University of Auckland
2000 (fall)	Visiting Professor	Faculty of Law	University of Western Ontario
2000 (spring)	Visiting Scholar	School of Law	Duke University
1990-91	Associate	Siskind Cromarty Ivey & Dowler	
1988-89	Articling Student	Siskind Cromarty Ivey & Dowler	
1987	summer student	Fraser & Beatty	

4. **HONORS AND AWARDS:**

Cassels Brock LLP Faculty Fellow in Contract Law 2009-10
 Insolvency Institute Fellowship, University of Toronto 1993
 Olin Fellowship, University of Toronto 1993
 Osgoode Society for Canadian Legal History, Graduate Student Grants 1993 and 1994
 Insolvency Institute Fellowship, University of Toronto, 1992-93
 Ontario Graduate Scholarship 1992-93
 University of Toronto Associates Travel Grant 1992-93
 Duke University School of Law Scholarship 1992
 Ontario Law Foundation Graduate Scholarship 1992
 Dean's Honour List 1986 & 1988, UWO Faculty of Law
 Dean's Honour List 1981, 1982, 1983, 1984, 1985, UWO BA.

5. TEACHING:**a) LLB Courses****University of Western Ontario,**

Contracts 2002-03, fall 03, 04, 2006-07, 2007-08, 2009-2010

Commercial Law spring 02, fall 02, 03, fall 07, fall 09

Bankruptcy and Insolvency Law, spring 02, 04, spring 07, 08, spring 10

Legal Research and Writing, fall 04

Victoria University of Wellington, Teaching Fellow

Introduction to Commercial Law, January 04

University of Toronto, Visiting Professor

Bankruptcy Law spring 03, fall 03

University of Western Ontario, Visiting Professor

Commercial Law Fall 2000

University of Auckland Faculty of Law: Dec. 1993 to 2001.

Commercial Law 1994-1999, 2001.

Creditors' Remedies 1994-1999.

Insolvency Law (LL.B. Paper) 2001.

Contract 1998.

International Trade 1999.

LL.B Honours Dissertation Supervision 1994-1999

Guest Lectures, University of Auckland

Faculty of Law, Legal Research and Methodology 1995-98 "Law and Economics"

Guest Lectures, University of Western Ontario

Advanced Issues in Technology Law. "Contracts, E-Commerce and Consumer Protection"

b) Graduate Courses and Graduate Guest Lectures**University of Auckland Faculty of Law**

Insolvency Law, LL.M. course 1995, 1996.

Secured Transactions, LL.M. Intensive Course, August 2008

University of Auckland, Business School

Guest Lecture "Director Liability" 1997

Guest Lecture "Voidable Transactions" 1997

Ivey School of Business, University of Western Ontario

Guest Lecture, Business Law: Bankruptcy and Insolvency Law, 2003, 2004, 2006

Guest Lecture, Business Law: Offer, Acceptance & Consideration, 2004

b) Graduate Courses and Graduate Guest Lectures (cont'd)**Osgoode Hall Law School, York University**

Guest Lecture: Commercial Law, LL.M. "Pre-bankruptcy Transactions" 2007

Guest Lecture: Commercial Law, LL.M. "Pre-bankruptcy Transactions" 2009

c) Graduate Supervision**University of Western Ontario, Faculty of Graduate Studies**

Master's Supervisory Member, July 2004-

University of Western Ontario:*Bankruptcy Law*: current supervision of Angelo D'Ascanio*Proposals for the Chinese Model of Anticipatory Breach: A Comparative Analysis of the Chinese Law, the CISG, the U.C.C. and the Anglo-Canadian Common Law*, by Can Wang (LL.M.) 2007.**University of Auckland, Consumer Warranty Law: Consumer Law Theory and the Consumer Guarantees Act 1993**, by Rae Nield (M. Jur.), 1997.d) Examiner of Graduate Work**Osgoode Hall School of Law, LL.M., Junbo Hao, *The Death of Merchantability and Particular Purpose: A Review, Redefinition of the Implied Terms as to Quality in Sale of Goods***, 2004.**Osgoode Hall School of Law, LL.M., Julia Shin Doi, *If it Ain't Broke, Why Fix It? The Reform of the Law Governing Personal Property Security Interests in Copyright and the Film Financing Model***, 2007.**University of Western Ontario, LL.M. Jian Zhnag, *International Trade and the Legal Regulation of Organic Food in China***, 2007.e) LL.B. SupervisionLL.B. Supervised Research, University of Western Ontario

2007 Lee Ann Gibbs, "UNCITRAL Model Law on Cross Border Insolvency"

2007 Grace Kim, "The Protection of Unpaid Workers in an Insolvency"

2003 J. Heinhuch, "Debtor in Possession Financing"

LL.B. Supervised Research, University of Toronto

2003 Dirk Zetzsche, "Corporate Reorganizations and Director Liability"

2003 Eyal Geva, "The Problem of Tort Claims in Bankruptcy"

LL.B. (Hons) Dissertations University of Auckland

1999

A. Knight, "The Power of the Prophecy and the Fair Trading Act 1986"

S. Fisher, "The Impact of Parallel Importing on Consumer Law"

L.L.B. (Hons) Dissertations University of Auckland (cont'd)1997

- A. Pfeifer, "Tort Creditors and Limited Liability"
 A. Kennedy, "Voidable Preferences and the Ordinary Course of Business"
 R. Davidson, "Consumer Protection in the Context of Distance Selling"
 R. Stewart, "Misleading Advertising and the Fair Trading Act 1986: The Advertiser's Perspective"

1996

- S. Walsh, "Receiverships"
 K. Dudick, "Trading Trusts" (joint supervision with G. Williams)
 D. Moniz, "Insolvent Trading"
 A. Doo, "Voluntary Administrations"
 M. Pollard, "Fraudulent Conveyances"

f) Prize Winning Papers or other Recognition of Student ExcellenceUniversity of Western Ontario

Marie Bruchet, "Director Removal and the CCAA": *Winner of 1st Prize in Insolvency Institute of Canada 2007 Student Writing Awards* (paper submitted to Bankruptcy and Insolvency course)

James Mangan, "What Is 'Deepening Insolvency' and Should It Come to Canada?": *Winner of 2nd Prize in Insolvency Institute of Canada 2007 Writing Awards* (paper submitted to Bankruptcy and Insolvency course)

Erin Strashin, "A New Era in Wage Earner Protection": *Winner of 3rd Prize in Insolvency Institute of Canada 2008 Student Writing Awards* (paper submitted to Bankruptcy and Insolvency Course)

g) Other Teaching**Law 101 (Undergraduate Course for Non-Law Students)**

Lectures on Contracts, Commercial Law, 2004, 2005, 2009-10

Ontario Bar Admission Course, Law Society of Upper Canada

Group Instructor, Creditor/Debtor Law, October 1992

Group Instructor, Legal Writing, May 1993

University of Western Ontario; Guest Lectures,

Philosophy of Law: "Offer, Acceptance and Consideration" 1992

h) Casebooks and Web CT Materials (for in course use)University of Western Ontario

Contracts Supplementary Materials 2002

Contracts Web CT Supplementary Materials 03, 04, 06, 07

Bankruptcy & Insolvency Law: Web CT Supplementary Materials 04, 07, 08, 10

Bankruptcy & Insolvency Law: Supplementary Cases and Materials, 2002, 2003

Commercial Law: Supplementary Cases and Materials 2002-2003

Commercial Law: Web CT Supplementary Materials 2003, 2007, 2009

Thomas Telfer & D. Kirwin: Commercial Law Cases and Materials 2000

Law 101: Materials on Contracts, Commercial Law and E-Commerce, 04, 05

Law 101: Materials on Commercial Law including Bankruptcy Law, 09

Victoria University of Wellington

Introduction to Commercial Law, Cases and Materials January 2004

University of Toronto

Bankruptcy Law: Cases and Materials 2003

University of Auckland

Insolvency Law (LL.B.) Cases and Materials 2001

Insolvency Law (LL.M.) Cases and Materials 1995-1997

T. Telfer and Julie Maxton, Commercial Law Cases and Materials 1996-1999

T. Telfer, Commercial Law Cases and Materials 1994, 1995

T. Telfer and Gordon Williams, Creditors' Remedies Cases and Materials 1996-1998

Creditors' Remedies Cases and Materials 1994-1995

Secured Transactions (LL.M.) Cases and Materials 2008

6. PUBLICATIONS:**Edited Books and Published Casebooks**

Anthony J. Duggan, Stephanie Ben-Ishai, Thomas G.W. Telfer, Roderick Wood, Jacob S. Ziegel, *Bankruptcy and Insolvency Law: Cases Text and Materials* 2nd ed (Toronto: Edmond Montgomery, 2009) (864 pp.)

Jacob S. Ziegel, Anthony J. Duggan & Thomas G.W. Telfer, *Bankruptcy and Insolvency Law: Cases Text and Materials* (Edmond Montgomery, 2003) (677 pages)

Charles E.F. Rickett & Thomas G.W. Telfer eds., *International Perspectives on Consumers' Access to Justice* (Cambridge University Press, 2003) (440 pages).

Journal Articles

"Ideas, Interests and Institutions and the History of Canadian Bankruptcy Law 1867-1880" (2010 spring) *University of Toronto Law Journal* (forthcoming).

Journal Articles (cont'd)

"The Search for Justice Ivan Rand's Commercial Law Legacy: Contracts and Bankruptcy Policy" (2010) *University of New Brunswick Law Journal & University of Manitoba Law Journal* (joint issue) (forthcoming)

Thomas Telfer & Bruce Welling, "The Winding-Up and Restructuring Act: Realigning Insolvency Law's Orphan to the Modern Insolvency Law Process" (2008) 24 *Banking & Finance Law Review* 235-270.

"The Evolution of Bankruptcy Exemption Law in Canada 1867-1919: The Triumph of the Provincial Model" [2007] *Annual Review of Insolvency Law* 593-651.

Also published in abridged form:

"The Origins of Canadian Bankruptcy Exemptions: Federalism, the Relevance of US Law and the Prospects for Reform" (2009), 20 *Journal Banking & Finance Law & Practice* 270-274.

"Statutory Licences and the Search for Property: The End of the Imbroglia?" (2007) 45 *Canadian Business Law Journal* 224-252.

Anthony Duggan & Thomas G.W. Telfer, "Canadian Preference Law Reform" (2006-2007) 42 *Texas International Law Journal* 661-684.

Also published as: Anthony Duggan and Thomas Telfer, "Voidable Preferences" in Stephanie Ben-Ishai and Anthony Duggan (eds.), *Canadian Bankruptcy and Insolvency Law: Bill C-55, Statute c.47 and Beyond* (LexisNexis, Toronto, 2007) 145-174. [see Chapters in Books]

David Brown & Thomas G.W. Telfer, "The New 'Australasian' Voidable Preference Law: Plus Ça Change?" (2007) 13 *New Zealand Business Law Quarterly* 160-183.

"The Proposed Federal Exemption Regime for the Bankruptcy and Insolvency Act" (2005) 41 *Canadian Business Law Journal* 279-327.

"A Canadian 'World without Bankruptcy Law': the Failure of Bankruptcy Reform at the end of the Nineteenth Century" (2004) 8 *Australian Journal of Legal History* 83-108.

"Unperfected Security Interests, Exempt Property and Bankruptcy: Reconciling the Claims" [2003] *Annual Review of Insolvency Law* 5-28.

"Voidable Preference Law Reform: Shifting Rules, Standards and Goal Posts: A New Zealand Perspective" (2003) 12 *International Insolvency Review* 55-82.

"Transplanting Equitable Subordination: The New 'Free-Wheeling' Equitable Discretion in Canadian Insolvency Law?" (2001) 36 *Canadian Business Law Journal* 36-88.

Journal Articles (cont'd)

"Defining a Consumer and the Right to Reject under the Consumer Guarantees Act 1993: The Long Road to the Court of Appeal" (2001) 7 *New Zealand Business Law Quarterly* 3-10.

"The New Zealand Model Code for Consumer Protection in Electronic Commerce: the Role of Industry Self-Regulation" (2001) 1(4) *Technology Law Forum* 46-51.

"Enforcement of Security Interests under the Personal Property Securities Act 1999" (2000) 6 *New Zealand Business Law Quarterly* 192-207.

"The Right of Rejection and the Consumer Guarantees Act" (1997) 3 *New Zealand Business Law Quarterly* 263-270.

"The Canadian Bankruptcy Act of 1919: Public Legislation or Private Interest?" (1994-95) 24 *Canadian Business Law Journal* 357-403.

"The Consumer Guarantees Act 1993" (1995) 1 *New Zealand Business Law Quarterly* 46-52.

Chapters in Books

Anthony Duggan and Thomas Telfer, "Voidable Preferences" in Stephanie Ben-Ishai and Anthony Duggan (eds.), *Canadian Bankruptcy and Insolvency Law: Bill C-55, Statute c.47 and Beyond* (LexisNexis, Toronto, 2007) 145-174.

Also published as: Anthony Duggan & Thomas G.W. Telfer, "Canadian Preference Law Reform" (2006-2007) 42 *Texas International Law Journal* 661-684 [See Journal Articles]

Anthony Duggan and Thomas Telfer, "Gifts and Transfers at Undervalue" in Stephanie Ben-Ishai and Anthony Duggan (eds.), *Canadian Bankruptcy and Insolvency Law: Bill C-55, Statute c.47 and Beyond* (LexisNexis, Toronto, 2007) 175-198.

David Brown and Thomas Telfer, "Guide and Commentary to the 2006 Amendments" pp. 1-125 in David Brown & Thomas Telfer, *Personal and Corporate Insolvency Legislation: Guide and Commentary to the 2006 Amendments* (Wellington: LexisNexis Butterworths New Zealand, 2007).

Republished as: David Brown & Thomas Telfer, "Insolvency" in C. Hawes ed., *Butterworths Introduction to Commercial Law* 2nd ed., (Wellington, LexisNexis, 2007) Chapter 31: pp. 711-820.

"Consumer Bankruptcy Law and Repayment Plans in New Zealand: Curing Misinformed Choices and Reforming the Discharge" in J. Niemi-kiesilainen, I. Ramsay, & W. Whitford eds. *Consumer Bankruptcy in a Global Perspective* (Oxford: Hart Publishing, 2003) 248-269.

Chapters in Books cont'd

"Access to the Discharge in Canadian Bankruptcy Law and the New Role of Surplus Income: A Historical Perspective" in Charles E.F. Rickett and Thomas G.W. Telfer eds., *International Perspectives on Consumers' Access to Justice* (Cambridge University Press, 2003) 231-263.

Charles E.F. Rickett & Thomas G.W. Telfer, "Consumers' Access to Justice: An Introduction" in Charles E.F. Rickett and Thomas G.W. Telfer eds., *International Perspectives on Consumers' Access to Justice* (Cambridge University Press, 2003) 1-13.

Thomas Telfer and Linda Widdup, "Priority between Security Interests" in *Morison's Company and Securities Law* (Wellington: Butterworths, December 2002) 1301-1334. [revised and updated 2004, 2006-2009]

Thomas Telfer and Linda Widdup, "Scope of the Personal Property Securities Act 1999" in *Morison's Company and Securities Law* (Wellington: Butterworths, August 2002) 1149-1171 [revised and updated 2004, 2006-2009]

Thomas Telfer and Linda Widdup, "Creation and Enforceability of Security Interests" in *Morison's Company and Securities Law* (Wellington: Butterworths, August 2002) 1181-1201 [revised and updated 2004, 2006-2009]

Thomas Telfer and Linda Widdup, "Introduction to the Personal Property Securities Regime" in *Morison's Company and Securities Law* (Butterworths, June 2002) pp 1103-1132 [revised and updated 2004, 2006-2009].

"Consumer Law" in *New Zealand Business Law Guide* (CCH, Looseleaf) (1999) [revised and updated para 50.001 - 51-910]

"Consumer Credit Law" *New Zealand Business Law Guide* (CCH, Looseleaf) (1999) [revised and updated para 60-100 - 60-630]

"Risk and Insolvent Trading" in C. Rickett and R. Grantham (eds.) *Corporate Personality in the 20th Century* (Oxford: Hart Publishing, 1998) 127-148.

"Insolvency Policy and Voluntary Administrations in New Zealand" in C. Rickett (ed.) *Essays on Corporate Restructuring and Insolvency* (Wellington: Brookers, 1996) 120-143.

Book Reviews

Review of *Debt's Dominion: A History of Bankruptcy Law in America*, by David Skeel (Princeton University Press, 2001) (2006) 16(5) *Law and Politics Book Review* 349-352.

Review of *Enforcing Securities* (Law Book Company, 1994), by John Greig and Bryan Horrigan (eds) (1996) 16 *New Zealand Universities Law Review* 108-111.

Commissioned Reports

Thomas Telfer, Mary Anne Waldron, David Young and Lisa Peters, "Canada Interest Act: Report of the Working Group" (A Report Prepared for the Uniform Law Conference of Canada Annual Conference, Quebec 2008) 23 pages.

"Preliminary Background Paper on the Canada Interest Act" (A Report Prepared for the Uniform Law Conference of Canada Annual Conference, Charlottetown 2007) 27 pages.

Thomas Telfer and Bruce Welling, "Report on the Winding-Up and Restructuring Act: A Report Prepared for the Property and Casualty Insurance Compensation Corporation" (November 2006) 51 pages.

"Preliminary Paper on the Law of Personal Exemptions from Seizure: A Report for the Uniform Law Conference of Canada" (A Report Prepared for the Uniform Law Conference of Canada Annual Conference, Regina 2004) 34 pages.

"Directors' Duties in the Context of Insolvency: A Review of ss135 and 136 of the Companies Act 1993" (A Report Prepared for the Ministry of Economic Development, Wellington: December 2000) 40 pages.

Other Works

David Brown and Thomas Telfer, "Voidable Preferences—is the New Law Actually an Improvement?" (2007) 60 *NZ Lawyer* 26-29.

Mark Perry and Thomas Telfer, "[Consumer Guarantees] Act gives Users Recourse from Buggy Products" (1995) April 24, *Computer World*, 23-24.

Works in Progress

From an Evil to a Commercial Necessity: Bankruptcy Law in Canada from 1867 to 1919
(advance contract signed in September 2006 with University of Toronto Press)

Social Science Research Network (SSRN) Downloads

Thomas Telfer & Bruce Welling, "The Winding-Up and Restructuring Act: Realigning Insolvency Law's Orphan to the Modern Insolvency Law Process" (2008) 24 *Banking & Finance Law Review* 235-270.

March 2009 listed on SSRN's Top Ten download list for *CGAL: Governance Law & Arrangements* by Subject Matter (Topic) and *GLSM: Insolvency & Reorganization Law* (Topic).

7. RESEARCH FUNDING:

2008, University of Western Ontario Academic Development Fund, Small Grant Competition, \$8415.20: *From an Evil to a Commercial Necessity: Bankruptcy Law in Canada from 1867 to 1919*

2007, Bordner Ladner Gervais Fellowship, \$10,000 (funding for one first year student for summer research) Project: *From an Evil to a Commercial Necessity: Bankruptcy Law in Canada from 1867 to 1919* (Manuscript for University of Toronto Press)

2005, Canadian Insolvency Foundation Research Grant, \$5000: "The Evolution of Exemption Law in Canada: Transplants and Cross Border Influences in the Age of Empire"

2000 & 2001, Chapman Tripp Research Grant, University of Auckland, "Access to the Consumer Bankruptcy Discharge" (funded student research assistant)

2000, Chapman Tripp Research Grant, University of Auckland, "The Consumer Guarantees Act 1993" (funded student research assistant)

1999, Chapman Tripp Research Grant, University of Auckland, "The Doctrine of Equitable Subordination" (funded student research assistant)

1999, Chapman Tripp Research Grant, University of Auckland, "Voidable Preferences: A Comparative View" (funded student research assistant)

1994, University of Auckland New Staff Research Grant, \$5000 (to fund visits to National Archives in Ottawa, to assist with completion of S.J.D.)

8. OTHER SCHOLARLY AND PROFESSIONAL ACTIVITIES:

Conference Papers

October 2009, "Ideas, Interests and Institutions and the History of Canadian Bankruptcy Law, 1867-1880" *Michael Trebilcock Symposium University of Toronto Faculty of Law*

February 2008, "The Evolution of Bankruptcy Exemption Law in Canada 1867-1919: The Triumph of the Provincial Model" *Annual Review of Insolvency Law Conference, University of British Columbia*.

September 2007, "Preliminary Paper on the *Interest Act*", *Uniform Law Conference of Canada, Charlottetown, P.E.I.*

March 2007, David Brown and Thomas Telfer, "Reforming Voidable Preference Law: Challenges and Change" *6th Annual Corporate Insolvency Law Conference, Auckland*.

Conference Papers cont'd

October 2006, Anthony Duggan & Thomas Telfer, "Canadian Preference Law Reform" *36th Annual Workshop on Commercial and Consumer Law*, Banff, University of Alberta.

August 2004, "Preliminary Paper on the Law of Personal Exemptions from Seizure" *Uniform Law Conference of Canada Annual Conference*, Regina.

February 2004, "Unperfected Security Interests, Exempt Property and Bankruptcy: Reconciling the Claims" *Annual Review of Insolvency Law Conference*, University of British Columbia.

October 2003, "The Necessity of a Federal Exemption Policy in Canadian Bankruptcy Law" *32nd Annual Workshop on Commercial and Consumer Law*, University of Toronto.

October 2002, "Voidable Preference Law Reform: Shifting Rules, Standards and Goal Posts: A New Zealand Perspective" *INSOL Academies Meeting, INSOL Annual Conference: Asia Pacific Rim*, Beijing China.

July 2002, "The Failure of Canadian Bankruptcy Law Reform: 1880-1903" *Law's Enterprise: Law and Economy in History. 21st Annual Conference of the Australian and New Zealand Law and History Society*, Katoomba Australia.

July 2001, "Consumer Bankruptcy Law and Repayment Plans in New Zealand: Curing Misinformed Choices and Reforming the Discharge" *Collaborative Research Network on Comparative Consumer Bankruptcy and Debt Readjustment. Law and Society Association and Research Committee on Sociology of Law Joint Meeting*, Budapest Hungary.

April 2001 "Access to the Consumer Bankruptcy Discharge in Canada and the New Role of Surplus Income: An Historical Perspective" *8th International Consumer Law Conference: Consumer's Access to Justice*, International Association for Consumer Law, University of Auckland.

October 2000 "Transplanting Equitable Subordination: The New Free-Wheeling Equitable Discretion in Canadian Insolvency Law?" *30th Annual Workshop on Commercial and Consumer Law*, University of Toronto, Faculty of Law.

Feb. 2000 "Remedies of Secured Parties under the Personal Property Securities Act" *Legal Research Foundation Conference on the Personal Property Securities Act*, Auckland.

Feb. 2000 "Remedies of Secured Parties under the Personal Property Securities Act" *Legal Research Foundation Conference on the Personal Property Securities Act*, Wellington.

Conference Papers (cont'd)

April 1999 "The Demise of Canadian Bankruptcy Law 1867-1880" *Organization of American Historians Annual Conference*, Toronto.

Oct. 1998: "The Demise of Canadian Bankruptcy Law 1867-1880" *American Society of Legal Historians Annual Conference*, Seattle.

July 1997: "Corporate Personality in the Insolvency Context" *Research Centre for Business Law Conference on "A Centenary Celebration of Salomon v Salomon"* University of Auckland.

June 1995: "Insolvency Policy and Voluntary Administrations in New Zealand" *Research Centre for Business Law Conference on "Corporate Restructuring: The Way Ahead"* University of Auckland.

Seminar and Professional Meeting Presentations

Commentator for Panel "Consumer Bankruptcy" (Topics include Subprime Mortgages and Responsible Lending) *Annual Review of Insolvency Law Conference*, University of British Columbia, Kelowna, BC, February 2010 (forthcoming).

"The Underlying Policy Objectives of Voidable Preference Law and the Revised Preference Regime: The Impact of the 2005 and 2007 Amendments" *London and Area Insolvency Discussion Group*, London ON, January 2010 (forthcoming).

"The Importance of History and the Political Economy of Insolvency Reform" *Osgoode Hull Law School Symposium on Teaching Insolvency Law*, Toronto, June 2009.

Commentator for Panel: "Priorities and Protection" (Topics include Equitable Subordination, Deemed Trusts and Preferences) *Annual Review of Insolvency Law Conference*, University of British Columbia, Banff Alberta (February 2009)

Thomas Telfer and Bruce Welling, "The Winding-Up and Restructuring Act" invited presentation to the Property and Casualty Insurance Compensation Corporation, (February 2008).

"In Search of a Policy Justification for Voidable Preferences" staff seminar, *Queen's University Faculty of Law* (November 2006)

"Exemptions and a Response to the Uniform Law Conference of Canada Proposal on a Uniform Exemptions Statute" *Working Group of the Civil Enforcement of Judgments Project Civil Section*, Toronto, (March 2004).

"Bankruptcy Law Reform: A Comparative Perspective" *Toronto Credit Association* (October 2002).

Seminar and Professional Meeting Presentations cont'd

"Reckless or Insolvent Trading and Director Liability: The New Zealand Experience" *Corporate Law Professors Seminar*, University of British Columbia, (February 2002).

"Director Liability for Insolvent Trading" staff seminar, *Queen's University School of Law*, Kingston, Ontario (January 2001).

"Director Liability for Insolvent Trading" staff seminar, *University of Victoria School of Law*, Victoria British Columbia (January 2001).

"Equitable Subordination and Canadian Insolvency Law" staff seminar, *University of Saskatchewan College of Law* (December 2000).

"Secured Parties and Equitable Subordination" Advanced Secured Transactions Class, *University of Saskatchewan College of Law* (November 2000)

"Equitable Subordination and Canadian Insolvency Law" staff seminar, *University of Western Ontario Faculty of Law* (November 2000).

"Consumer Law Reform in New Zealand" *University of Southern Denmark*, Odense Denmark. (August 2000).

"Voidable Preferences" *High Court of Auckland*, (March 2000).

"The Right of Rejection and the Consumer Guarantees Act 1993" *Bell Gully Barristers and Solicitors*, Auckland, (October 1997).

"Law and Ethics" *Newman Hall, University of Auckland*, (October 1997).

"Exclusion Clauses and the Fair Trading Act 1986" *Bell Gully, Barristers and Solicitors*, Auckland, (October 1996).

"The Legal History of Bankruptcy Law: A Comparative Approach" Staff Seminar, *University of Auckland Faculty of Law*, (October 1996).

"A New Zealand Perspective" Address to London West Rotary Club (January 1995).

Participant in Research Symposium

2009 Insolvency Research Symposium, Office of Superintendent of Bankruptcy, Ottawa, (November, 2009)

2008 Insolvency Research Symposium, Office of Superintendent of Bankruptcy, Ottawa, (May, 2008)

2007 Insolvency Research Symposium, Office of Superintendent of Bankruptcy, Montreal, (March, 2007)

Participant in Research Symposium (cont'd)

2006 Insolvency Research Symposium, Office of Superintendent of Bankruptcy, Vancouver (January, 2006)

2004 Insolvency Research Symposium, Office of Superintendent of Bankruptcy, Montreal, (August, 2004)

Conference or Panel Chair

"Commercial Issues" Moderator, *2008 Insolvency Research Symposium*, Office of Superintendent of Bankruptcy, Ottawa, (May, 2008)

"Competition Law" Panel Chair, *Law's Enterprise: Law and Economy in History*, 21st Annual Conference of the Australian and New Zealand Law and History Society, Katoomba Australia, (July 2002).

"E-Commerce" Panel Chair, *Eighth International Consumer Law Conference: Consumer's Access to Justice*, Auckland, (April 2001).

"Private Regulation" Panel Chair, *Eighth International Consumer Law Conference: Consumer's Access to Justice*, University of Auckland, (April 2001).

"Miscellaneous Consumer Issues" Panel Chair, *Eighth International Consumer Law Conference: Consumer's Access to Justice*, University of Auckland, (April 2001).

Conference Chair of *1st Annual Credit Law Conference*, Auckland, (March 2000).

General Editor

New Zealand Law Review:

[1997] Part III pp. 319-421

[1997] Part IV pp. 423-530

[1997] Part V pp. 531-685

[1998] Part I pp. 1-172

[1998] Part II pp. 173-402

[1998] Part III pp. 403-584

[1998] Part IV pp. 585-772

Book Review Editor

Canadian Business Law Journal: 2007-

Editorial Boards

New Zealand Law Review: 1999-

Canadian Business Law Journal, Specialist Editor Insolvency Law: 2002-

Annual Review of Insolvency Law 2003-

Commercial and Consumer Transactions Series Editorial Board

Emond Montgomery 2003-2009

Referee for University Press Manuscript

University of British Columbia Press: 2002

Referee for Journals

Windsor Review of Legal and Social Issues: 2004

Annual Review of Insolvency Law: 2003, 2004, 2006, 2007, 2009

Queen's Law Journal: 2003

Osgoode Hall Law Review: 2002

Ottawa Law Review: 2001

New Zealand Business Law Quarterly: 1994-1998, 2001

New Zealand Law Review: 1995, 1997, 1999

Referee for Grant or Fellowship Applications

Referee for Osgoode Hall Law School Research Fellowship: 2007.

Law Reform Working Group Committees**1. Unincorporated Associations**

Member of Canadian Delegation (Uniform Law Conference of Canada, (ULCC)) to the Uniform Law Commission (ULC) on *Project to Create a Harmonized Legal Framework for Unincorporated Associations in North America* (Canada-U.S.-Mexico)

Preliminary Meeting of Canadian Delegation for Unincorporated Associations (Vancouver, January 2006)

Joint Meeting (Portland OR, March 2006)

Joint Meeting (Washington DC, September 2006)

Joint Meeting (Portland OR, February 2007)

Joint Meeting (Washington DC, November 2007)

Joint Meeting (Tucson AR, March 2008)

ULCC in its 2008 Annual Meeting adopted the *Uniform Unincorporated Nonprofit Associations Act* and recommended it to jurisdictions for enactment

2. Federal Interest Act

Member of Uniform Law Conference of Canada Working Group on the federal Interest Act (2008-)

Submissions on Law Reform

T. Telfer, "Consumer Bankruptcy Law and Repayment Plans in New Zealand" Submission to the Ministry of Economic Development, July 2001.

J. Ziegel, Vaughan Black, Anthony Duggan, Thomas Telfer, "The Consumer Protection Statute Law Amendment Act, 2002: Submission on Bill 180 to the Ontario Legislative Assembly and to the Committee on Finance and Economic Affairs" (December 2002)

Submissions on Law Reform cont'd

J. Ziegel, V. Black, R. Cuming, E. Edinger, I. Ramsay, T. Telfer & R. Wood, "Submissions on Amendments to the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act" Presented to the Senate Standing Committee on Banking, Trade and Commerce (May 2003).

A. Anand, Stephanie Ben-Ishai, Vaughan Black, Tamara Buckwold, Ronald CC. Cuming, Anthony J. Duggan, Thomas G. W. Telfer, Roderick J. Wood, Jacob Zigel, "Submissions on Statute c.47 and Statute c.12: The Wage Earner Protection Program Act, and Amendments to the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act" Presented to the Senate Standing Committee on Banking, Trade and Commerce" (February, 2008)

Legislative Testimony

Testimony of Thomas Telfer, "Administration and Operation of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act" before the *Senate Standing Committee on Banking, Trade and Commerce, 37th Parliament, 2nd Session, 29 May 2003.*

Student Editorial Committees

University of Toronto Faculty Law Review 1992-93

Duke Journal of Comparative & International Law 1991-92

Other

Coordinator of 2001 Legal Research Foundation Legal Writing Awards
"Legal Writing Awards" (2000) 573 *Law Talk* 7.

Media Interview

28 September 2001, *Financial Advisor New Zealand*, "Finance Industry Slams Changes to Personal Property Securities Act" (Interview on impact of PPSA)

9. UNIVERSITY ADMINISTRATIVE DUTIES:**a) Faculty of Law, University of Western Ontario**

Director, Area of Concentration in Business Law fall 2002-2004, 2009-

Advisory Board, Western Business Law Clinic September 2004-December 2004

Appeals Committee spring 2002-2004

Working Group on Area of Concentration in Business Law spring 2002

Judge of Practice Corporate and Securities Law Moot 2003, 2004, 2007

Member of Decanal Review Committee, 2003- 2004 (elected position)

Information Technology Committee, fall 2004

Member of Programmes Committee 2006-2007

Member of Promotion and Tenure Committee (elected 2007-2008)

Canadian Association Law Teachers Representative 2007-2008

Ontario Bar Association Representative 2008-

b) University of Western Ontario

Law Faculty Representative, Ivey School of Business Council 2003-2004, 2004, 2009-
 Law Faculty Representative, Social Science Council 2003-2004, 2008-
 Assistant Marshall, University of Western Ontario Convocation, 2003, 2007

c) Faculty of Law, University of Auckland

Chair of Law School Information Technology Committee 2001
 Co-ordinator Staff Seminar Series 1996 & 1997
 Post Graduate Committee 1997, 1998, 1999
 Law Library Committee 1997, 1998, 1999
 Research Centre for Business Law, assisted in coordinating seminars
 Counseling for Student selection of undergraduate papers 1996
 Law School Copyright Policy 1994
 Member of Panel, "Pursuing Graduate Law Studies Overseas" 1998, 2001.

d) University of Auckland

Law School representative on Information Technology Committee 1994

10. COMMUNITY SERVICEExternal Committees and Associations*Joint Insolvency Committee*

(NZ Law Society & NZ Society of Accountants) 1998-2001

Submissions included:

- "Voidable Preferences in Australia and the United Kingdom"
- "Construction Lien Legislation in Canada"
- "Voidable Preference Law in the United States"
- "Secured Creditors and Voidable Preference Law"
- "Bankruptcy Administration"

Member of Council of Legal Research Foundation, Auckland, 1997-2001

Member of Organizing Committee: Harmonization of Business Law Seminar 2001

Professional Memberships

Law Society of Upper Canada
 Canadian Insolvency Foundation
 Osgoode Society for Canadian Legal History
 American Society for Legal History
 Canadian Historical Association

Voluntary Associations and Groups

Crohn's and Colitis Foundation of Canada:

Member of Executive: London Chapter, Regional Conference 1993.

Volunteer Burger Charity Day. 2002, 2003, 2007, 2008.

Member Crohn's and Colitis Group, New Zealand 1995-2000.

Charter Member of Auckland Curling Club 1996-2001.

Member of University of Western Ontario Curling Team 1985-86.

Member of New Zealand Curling Team 2001.

Winner of Silver Medal, Pacific Curling Championships Korea 2001.

Competed in Karuizawa Japan Int'l Curling Championships (Feb. 2002).

Member of Highland Country Club 2002-2007, 2009-

Coach in Little Rock Curling Programme at Highland Country Club 2006-2007.

Coach of St. Thomas Aquinas Secondary School Curling Team 2008-2009.

This is **Exhibit "B"** referred to in the Affidavit of Thomas G.W. Telfer
sworn December 23, 2009.



Commissioner for Taking Affidavits

Andrew William Graham, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law
Expires August 12, 2012.

Court File No: 04-CV-275541 CM2

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

IMPERIAL PARKING CANADA CORPORATION
CORPORATION CANADIENNE DE STATIONNEMENT IMPERIAL

Applicant

- and -

CITY OF TORONTO

Respondent

AFFIDAVIT of GORDON CRAIG

(Sworn September 13, 2004)

I, Gordon Craig, of the City of Toronto, Regional Vice President for Eastern Canada of Imperial Parking Canada Corporation ("Impark"), MAKE OATH AND SAY:

1. I have personal knowledge of the facts set out herein except where stated to be based on information and belief, and where so stated I believe the same to be true.
2. I am making this affidavit as an authorized representative of Impark in support of an application for, among other things, a declaration that the City of Toronto By-law No. 725-2004 to amend the City of Toronto Municipal Code Chapter 545, Licensing, respecting the requirements for private parking enforcement agencies undertaking parking enforcement activities, enacted by the City of Toronto Council on July 22, 2004 (the "By-law Amendment")

does not apply to enforcement activities by Impark pursuant to the terms of its Parking Contracts (as defined below) and is of no force and effect.

Imperial Parking Lots

3. The head office of Impark is based in Vancouver, British Columbia. Impark owns, leases or manages parking lots across Canada. In particular, Impark owns, leases or manages 102 parking lots in Toronto that offer parking services to the public (the "Impark Lots").

4. Attendants staff most Impark Lots in Toronto. Forty-eight of the Impark Lots in Toronto have no attendant. None of the Impark Lots in Toronto are owned or leased by the City of Toronto. Most of the Impark Lots are private property, although a small number are managed by Impark on behalf of government entities such as the Government of Canada and hospitals.

5. The parking service provided at unattended Impark Lots offers customers a choice of either paying in advance by purchasing and displaying a parking pass or parking vouchers obtained from a dispenser, or paying a higher amount through a payment enforcement process. These options are displayed prominently with signage at each unattended Impark Lot.

6. Impark is required to remit GST with respect to monies collected from parking services, including amounts collected where the customer did not pay in advance. The Federal Court of Appeal has ruled that the signage at Impark Lots creates a contract whereby the customer chooses either to pay less by paying for the services fully in advance, or to pay more in arrears with the possibility of Impark towing the vehicle (the "Parking Contract").

7. The signage at Impark Lots has been modified slightly since the Federal Court of Appeal decision, but only to clarify the contractual and consensual nature of the terms of the Parking Contract. In particular, Impark consents to vehicles parking without displaying a valid pass or sufficient parking vouchers, on the terms set out in the signage that is displayed at each unattended Impark Lot.

8. The current wording of the signage at unattended Impark Lots in Toronto is set out on the sample sign that is attached as Exhibit "A" to this affidavit. The salient portion provides as follows:

Imperial Parking Canada Corporation ("Impark") accepts no responsibility for loss, theft or damage to vehicles or contents. We do not take custody of vehicle but rent space only. Vehicles that do not display a valid ticket or pass may be tagged and/or towed away and held for storage charges, if applicable.

PLEASE READ CAREFULLY...THIS IS PRIVATE PROPERTY

GST # 887315638RT0002

Impark is by this sign offering space for public parking. You accept this offer by parking on this lot. Do not park on this lot if you do not agree to these terms and conditions. All requirements of notice and acceptance are hereby waived by Imperial Parking Canada Corporation. If you park and do not display a valid ticket or pass the rate is \$69.55 per day or portion thereof. In addition, your car may be subject to being tagged and/or towed.

By parking on this lot, you grant permission to the Ministry of Transportation of Ontario to provide registered owner information, including name and address, for the vehicle you are driving, to Impark and its agents, for the purpose of collecting unpaid parking fees and violation notice fees.

9. Impark uses unattended lots to reduce operating costs and keep rates competitive for the local area. This allows lots to be used for parking that would otherwise be uneconomical to run and, therefore, results in greater availability of public parking in the City of Toronto. Unattended lots are only possible if Impark has an effective patrol and enforcement system;

however, such a system has inevitable costs, which Impark tries to pass on only to customers who do not pre-pay for parking. Impark does this through its payment notice system. If Impark were not permitted to issue, and collect upon, its own Payment Notices, the main effects would be as follows: (a) there would be a dramatic increase in towing; (b) Impark would be forced to place an attendant on some Impark Lots, which would result in higher parking rates on those lots; and (c) some lots would have to be closed altogether, as they would be too small to justify the cost of an attendant.

Impark's Enforcement Procedures

10. Impark has personnel patrol unattended lots periodically.
11. In the event a vehicle is parked without displaying a valid pass or sufficient parking vouchers, a notice is placed on the vehicle (a "Payment Notice"). The Payment Notice stipulates that a contract debt is owed to Impark for the parking service. A sample form of the Payment Notice currently used by Impark is attached as Exhibit "B" to this affidavit.
12. The form of Payment Notice has been designed by Impark to be unmistakably distinct from the Parking Infraction Notice issued by the City of Toronto under Part II of the *Provincial Offences Act*. A sample form of the Parking Infraction Notice currently used by the City of Toronto is attached as Exhibit "C" to this affidavit.
13. If a vehicle is improperly parked in a stall designated for vehicles displaying a valid disabled placard, Impark does not issue a Payment Notice. Rather, Impark requests a municipal parking enforcement officer to issue a City of Toronto by-law notice and have the vehicle towed. Impark receives no payment in respect of vehicles improperly parking in stalls designated for disabled customers.

14. Impark is careful to issue Payment Notices only in appropriate circumstances. Each time an Impark patroller issues a Payment Notice, two digital photographs are taken: one of the dash of the car to show that no valid pass or parking vouchers are on display, and a second of the car on the lot that shows the licence plate.

15. Each time an Impark patroller issues a Payment Notice, a database of unpaid Payment Notices is consulted by hand-held access. The vehicle may be towed if there are unpaid Payment Notices for the vehicle.

16. The Payment Notice provides instructions for payment and also how to contact Impark to dispute the debt. Impark has guidelines to deal with specific questions and often negotiates a resolution of the parking debts.

17. Payment Notices and statements provide a toll-free telephone number for customers to inquire about the notice. The lines are staffed by customer service representatives with access to the parking customers notice history, pictures of the lot, and detailed information about the lot's operating procedures.

18. The customer service representatives follow an established set of guidelines for dispute resolution which lay out Impark's standard responses for handling the 100 or so most common dispute scenarios and have some flexibility to negotiate a settlement with the customer based on those guidelines. About 80% of the disputes arise from the 20 most common reasons (such as claiming to be only a few minutes overdue, not to have had any change, not realizing payment was required).

19. In many cases the customer service representatives will ask the customer to fax in a copy of their receipt to be used as a proof of payment for their dispute.
20. Customers also have the option of disputing the notice in writing to the address on the notice and/or statement. The same decision processes apply to written disputes as to those received by telephone.
21. The customer service representatives use a variety of different letter templates that are tailored to the dispute guidelines. Where necessary, they can customize the content of the form letter to suit the particular dispute.
22. Depending on the nature of the dispute, the customer service representatives can uphold the notice for the full amount, reduce the amount owing, cancel the notice and issue a refund where appropriate.
23. The exact course of action for each type of dispute we receive is codified to ensure that each staff member treats every customer equally. All Impark and collection company staff must adhere to our dispute resolution standards.
24. It is never Impark's intention to annoy its customers by issuing and following up on Payment Notices. Rather Impark simply seeks to collect the parking debt that is owed.
25. If the dispute cannot be resolved by a customer service representative, there are three levels of escalation. The first is to a telephone supervisor, then to a Department Supervisor, and finally to Impark's Customer Service Manager.
26. Impark's final resort is to sue for the parking debt in the small claims court.

27. If the parking debt remains unresolved for six weeks, then the owner information is searched through the applicable provincial authority, and a statement is mailed to the parking customer.

28. If in the following six weeks the parking debt cannot be resolved by negotiation or where there has been no payment or other contact in respect of the vehicle, Impark assigns the parking debt to a collection agency.

29. The collection agency that Impark uses in respect of parking debts from Impark Lots in Toronto is Canadian Bonded Credits Ltd. ("CBCL"). CBCL is licensed to operate as a collection agency under the *Collection Agencies Act*, R.S.O., c. C.14.

30. Impark is not aware that CBCL uses unlawful or abusive practices in its collection of parking debts. Impark believes that CBCL is a reputable collection agency that performs its collection function in accordance with the law, including all applicable consumer protection and debt collection laws. Impark has not received any notice from the Province of Ontario regarding any alleged breach of consumer protection or debt collection laws with respect to collections for Impark, or otherwise.

31. Indeed, the City of Toronto uses the same collection agency to collect in respect of its collection services for outstanding parking fines. On or about July 22, 2004—at the same council meeting in which the By-law Amendment was enacted—the City Council of Toronto adopted a resolution to renew CBCL for a year and to increase the percentage remuneration paid to CBCL. Attached as Exhibit "D" to this affidavit is a copy of item 7.10 of the Administration Committee Minutes dated June 28, 2004 and item 10.4 of the Minutes of the Council of the City

of Toronto dated July 20, 21 and 22, 2004. The salient portion of the council resolution was as follows:

Clause 9 - "Authority to Renew Option Years for RFP 9138-01-7489 for the Use of Collection Agency Services to Collect Outstanding Parking Tags (Contract No. 47008940)".

City Council on July 20, 21 and 22, 2004, amended this Clause by:

(1) deleting the recommendation of the Administration Committee and inserting instead the following:

"That the following Recommendation (1) of the staff recommendations contained in the Recommendations Section of the report dated June 15, 2004, from the Chief Financial Officer and Treasurer, be adopted:

'(1) the City exercise the option to renew the contract with Canadian Bonded Credits Ltd. for an additional one-year period under the same terms and conditions, to provide collection services for outstanding parking fines, with overall costs not to exceed \$250,000.00, including applicable taxes for the period ending February 8, 2005;'; and

(2) adding the following:

"That the Chief Financial Officer and Treasurer be requested to report to the Administration Committee on the feasibility or desirability of increasing the percentage remuneration to Canadian Bonded Credits Ltd. and on options for selling the \$54 million of receivables to Canadian Bonded Credits Ltd."

This Clause, as amended, was adopted by City Council.

32. The City of Toronto parking authority has several advantages over private operators, which allows it to charge lower rates. A by-law notice results in a \$20 fine, which escalates to \$30 in seven days if it remains unpaid. The fine is enforceable as an offence and non-payment can result in denial of licence plate renewal for the vehicle. As a result, the voluntary payment rate is much higher in comparison to private parking operators, which saves it administrative costs, such as the fee charged by the province for licence plate look-up. The plate look-up fee costs a private operator between \$7.50 to \$14.00 per search depending on the volume

of plates being searched at one time. Impark pays an average of \$10.00 per search over the course of a year.

33. Impark can only enforce a Payment Notice as an ordinary contract debt. Impark has higher administrative costs of enforcement, which include the look-up fee that Impark has to pay the provincial government to obtain current ownership information in respect of a vehicle. Further, because Impark cannot invoke denial of plate renewal for unpaid parking debts and such parking debts are not otherwise enforced as municipal offences, Impark's collection rates on Parking Notices is less than half. Accordingly, the amounts charged by Impark (\$37.35 plus G.S.T. if paid within seven days, otherwise \$65.00 plus G.S.T.) reflect additional enforcement and collection costs.

34. If Impark were no longer permitted to enforce contract debts from unpaid parking services, Impark would be compelled to amend the terms of parking and have all unpaid vehicles towed in order to clear space for paying customers. In addition to the inconvenience of having to locate and retrieve a vehicle from an impounding lot, the financial impact to a customer for a towed car would include a \$20 City bylaw fine (if paid within seven days), a \$15 cab ride to the tow lot (estimated), an \$80 basic tow charge, a \$20 per day storage fee (one day minimum) and at least \$7.00 G.S.T., for a minimum \$142 cost to the customer. This would be over \$100 more than an Impark parking violation and a substantial inconvenience, and the charges could not be waived or reduced at the discretion of Impark. Moreover, the cost to the customer could increase by an extra \$10 tow charge for a dolly (for 4-wheel drive vehicles), an extra \$10 for paying the City fine after seven days, or an extra \$20 for leaving the vehicle in the pound for too long.

Background to the By-law Amendment

Source of Complaints

35. There is a lengthy history of the City of Toronto dealing with the issue of so-called look-alike parking tickets according to my review of the documents obtained from the City of Toronto and attached as Exhibits to this affidavit (the "City Documents"), the highlights of which are chronicled in the paragraphs that follow. The City Documents indicate particular concern over the practices of other parking businesses in Toronto that operate differently than Impark. For example, the City Documents assert that there are owners, occupants or operators of parking lots that only have a legal claim for damages under the law of trespass, presumably because those lots do not display signs that result in the formation of a parking contract.

36. The City Documents also disclose that there are parking enforcement businesses ("Bare Enforcement Agencies") that act only as enforcement agents for the owner, occupant or operator of private property. For example, a landlord of an apartment block might use a Bare Enforcement Agency to remove vehicles that improperly occupy tenant stalls. The name of a Bare Enforcement Agency would not appear on the private property that it patrols and a person who parks does not see its name. By contrast, Impark's name is displayed prominently at an Impark Lot, so if a customer disagrees with Impark's collection practices, this would be more likely to influence his or her decision whether to park at any Impark Lot. There is thus a material difference in market forces that influence the enforcement practices of operators such as Impark, as opposed to Bare Enforcement Agencies.

37. Based on my review of the City Documents, I believe City officials became concerned that some operators, typically Bare Enforcement Agencies, sought to improve their collection rates by issuing parking invoices designed to look like City of Toronto notices,

because the City of Toronto can enforce its Parking Infraction Notices through Part II of *Provincial Offences Act* and the vehicle licence plate denial regime. In this way, vehicle owners would be more likely to believe that there will be consequences, apart from a small claims action to enforce a trespass claim.

38. The City Documents show that the propriety of "look-alike" parking notices has been an issue in Toronto civic politics for several years. By letter dated October 31, 1996, Mr. H.W.O. Doyle, a solicitor with the Municipality of Metropolitan Toronto, wrote to the Attorney General of Ontario in respect of individuals parking on private property who were receiving documents, placed on the windshields of their cars, "which in their size, colour, and format closely resemble Parking Infraction Notices" issued under the *Provincial Offences Act* by a Provincial Offences Officer for violation of a municipal parking by-law. The notices Mr. Doyle was concerned about "purport to be from an agent of the property owner," that is, Bare Enforcement Agencies. Mr. Doyle observed that although not fraudulent in content, the notices "appear to be designed to leave the overall impression with the general public unfamiliar with the details of the regulated form, that they are official Parking Infraction Notices, alleging a breach of the municipal parking by-law, which must be responded to, failing which, pursuant to the provisions of the Act, a default conviction and plate denial will result." Mr. Doyle concluded that legally, the city had no basis to obtain a court injunction "to prevent the use of the 'Notice' as being deceptive or misleading to the recipient." Mr. Doyle therefore requested that the province enact an amendment to the *Provincial Offences Act* to make it an offence "to use a regulated form or a close copy thereof for a purpose not sanctioned by the statute." A copy of the City of Toronto's file copy of the October 31, 1996 letter is attached as Exhibit "E" to this affidavit.

39. The issue of look-alike notices also attracted media attention about this time. For example, a December 1, 1996 article of the Toronto Sun entitled "Parking tags scam" refers to "deceitful" parking tags that on a first glance are a dead ringer for the real McCoy." A representative of a company that provides Municipal Law Enforcement Officers is quoted as saying, "To me this is a scam. I think these bogus tickets were set up to fool people." Another representative of the same company is quoted as saying, "These guys moved in after the city changed the bylaws on tag and tow. We're licensed, trained and supervised by Metro, plus we have insurance and follow the rules. They are taking clients away from us and they're not accountable." The representative is referring to Bare Enforcement Agencies. The article reported that a call to the number on the look-alike notice was answered by someone who would not give the name of the company or its address. A copy of the December 1, 1996 Toronto Sun article is attached as Exhibit "F" to this affidavit.

40. In February 1997, Mr. Graham Reynolds, the Assistant Deputy Attorney General (Criminal Law Division) responded by letter. The letter conceded that the sample copies of notices "strongly resemble" Parking Infraction Notices that "could mislead a citizen to believe a notice has been issued under municipal authority." However, the letter observed that there was nothing fraudulent in the content and there was no apparent copyright infringement, leaving the Crown without a clear basis to proceed to seek an injunction. The letter reported that the proposed legislative amendment would be considered. No such amendment has ever been passed by the province. A copy of the letter to Mr. Doyle is attached as Exhibit "G" to this affidavit.

41. Soon afterward, the Toronto Star published an article reporting on the contents of the letter from Mr. Graham. The article reported that it was Metro Councillor Howard Moscoe, also a member of the Metro Licensing Commission, who had brought the issue of look-alike tags

to light. Mr. Moscoe is quoted as saying, "We've also asked our solicitor to come up with some creative solutions." A copy of the Toronto Star article is attached as Exhibit "H" to this affidavit.

City Response to Look-Alike Tickets

42. On August 12, 1999, the City Solicitor made a report to the City of Toronto Administration Committee in which he concluded the City of Toronto had no legal grounds in civil courts to challenge look-alike tickets because the City could not establish it suffers any particular loss. The City Solicitor reported that there had already been a successful criminal conviction for an attempt to defraud the public by the use of a look-alike ticket. Based on the City Solicitor's report, the Administration Committee recommended, among other things, the matter be referred to the police for criminal investigation. A copy of the Administration Committee recommendations, which also contains the report of the City Solicitor, is attached as Exhibit "I" to this affidavit.

43. In a City of Toronto document dated March 30, 1999, the Chief Financial Officer and Treasurer, reported on "look-alike" tickets that "are similar in colour and appearance to the official Parking Infraction Notice issued under the authority of the Parking Enforcement Unit of the Toronto Police Service." The Chief Financial Officer and Treasurer reported that each complaint in respect of "look-alike" tickets was investigated for possible criminal charges. As there were not that many complaints, the Chief Financial Officer and Treasurer reported that should the number of "lookalikes" increase, the process would be reviewed and modified as required. A copy of Chief Financial Officer and Treasurer's March 30, 1999 report to the Corporate Services Committee is attached as Exhibit "J" to this affidavit.

44. In response to the March 30, 1999 report, on a motion by then councillor David Miller, the Corporate Services Committee resolved to request the City Solicitor to submit a report to the Corporate Services Committee on a strategy for instituting litigation injunctions for quasi-criminal or criminal proceedings against parties who issued "lookalike tickets." The preamble to the resolution identified "lookalike tickets" as being "similar in colour and appearance to the official Parking Infraction Notice issued under the authority of the Parking Enforcement Unit of the Toronto Police Service" and reported that "less than 25 lookalike tickets are brought to the attention of the Parking Tag Operations and Parking Enforcement staff each year." The committee also addressed the issue of the withdrawal of over 8,500 parking tags improperly issued by the Parking Enforcement Unit of Toronto Police Services in 1998 in respect of vehicles displaying a valid disabled permit. A copy of the April 19, 1999 minutes of the Corporate Services Committee is attached as Exhibit "K" to this affidavit.

45. In a Toronto Star article entitled "Moscoe targets private ticketers" published December 1, 1999, Toronto Councillor Howard Moscoe raised concerns about companies that act in a dual capacity as Municipal Licence Enforcement Officers for the city and Bare Enforcement Agencies regarding parking on private property. He also raised concerns about Bare Enforcement Agencies receiving a \$45 administration fee for arranging for cars to be towed. The Councillor was also reported as saying in a letter to the Police Chief that this situation "rips off the public and deprives city coffers of parking ticket revenue." The article reported that the Councillor's letter to the Police Chief was prompted by a complaint from a tow operator who was being asked to collect the \$45 fee on behalf of the Bare Enforcement Agency. A copy of the December 1, 1999 Toronto Star article is attached as Exhibit "L" to this affidavit.

City Views Look-Alike Tagging as Lost Revenue

46. The financial implications of parking to the City of Toronto were reviewed in a report of the City Auditor to the Budget Advisory Committee dated January 4, 2000. The background section reported that the City generates approximately \$48 million annually from the issuance of parking tags. The report noted that since consolidation of metro parking enforcement function in 1993, the annual enforcement budget had risen from \$15.5 million in 1993 to \$21.5 million in 1999; however, total tag issuance had remained relatively constant at about 2.5 million per year. The report observed that projected revenue increases had not been realized:

However, notwithstanding the aforementioned benefits, the level of issuance is significantly lower than the 2.9 million tags projected by Toronto Police Service at the time of consolidation. As such, the additional cost of consolidation has not been offset by a corresponding increase in revenue, resulting in a significant reduction in net revenue to the City.

The report recommended that the Chief of Police report to the Policy and Finance Committee, among other things, on any initiatives planned by the Parking Enforcement Unit to improve its operations and thereby reduce the annual cost of enforcement and optimize revenue to the City. The report observed that since 1994, "some property owners and private security agencies have opted to print their own tickets and remove unauthorized vehicles parked on their private property under the Trespass to Property Act or 'Common Law' (which is governed by precedent not municipal by-laws). Some agencies have been found issuing tags that very much resemble those issued by the City, and collecting the fines for themselves." The City Auditor recommended that "the Parking Enforcement Unit develop a strategy to promote the use of certified municipal law enforcement agencies by property owners..." The report concluded that the level and quality of tag issuance have a "significant impact on parking tag revenue." A copy

of the report of the City Auditor to the Budget Advisory Committee dated January 4, 2000 is attached as Exhibit "M" to this affidavit.

47. On or about May 30, 2000, the City Solicitor reported to the Administration Committee that the City lacks legal standing to challenge "phoney or lookalike parking tags" in the civil courts or to apply for injunctions to restrain the use of "such tags." The City Solicitor reported that the staff of Legal Division had been meeting with staff of Municipal Licensing and Standards and the Police Services Board to review the existing by-laws regulating parking on private property. "Their work included consultation with numerous individuals and representatives of corporations involved in enforcement in relation to parking on private property." The City Solicitor referred to an attached joint report containing recommendations "intended to reduce or totally eliminate the incidence of phoney or lookalike tickets." A copy of the report of the City Solicitor to the Administration Committee dated May 30, 2000 is attached as Exhibit "N" to this affidavit.

48. The joint report mentioned was the May 30, 2000 report from the City Solicitor and Commission of Urban Development Services to the Administration Committee. A copy of the report of the City Solicitor and Commission of Urban Development Services to the Administration Committee dated May 30, 2000 is attached as Exhibit "O" to this affidavit. The purpose of the report was to recommend improvements to the program design and associated by-laws governing parking enforcement on private property. Under the heading Financial Implications and Impact Statement, the report stated that "adoption of the recommended by-law changes may prevent future loss of City ticket revenue caused by certain organizations issuing 'look alike' tickets rather than Provincial Offences Act tickets." Among other things, the report recommended that:

Council amend Metropolitan Toronto Licensing By-law Number 20-85 to change the regulations applying to tow truck drivers and owners and vehicle storage and pound operators and to establish license requirements and regulations for commercial businesses providing parking management and enforcement services as described in this report;

Council enact a new city-wide bylaw as described in this report to prohibit the parking or leaving of motor vehicles on private or municipal property without consent and to repeal and replace by-laws currently in force;

The City Solicitor prepare and present to Council the necessary by-laws to give effect to the above recommendations;

The City continue to appoint employees of commercial businesses as municipal enforcement officers to deliver private property parking enforcement services, but with new controls and regulations recommended in this report to prevent future abuses;

The Chief of Police report at the completion of two years, or earlier if circumstances warrant, on the operation of the private property enforcement program, with recommendations as to whether a municipal delivery model should be implemented; and

The City seek private legislation from the Province to eliminate the common law right to remove vehicles from any private property that is subject to a by-law which provides for the removal or impounding of vehicles parked or left on the property without consent.

Abusive Common Law Towing Seen as Cause of Look-Alike Ticketing

49. The historical background section of the May 30, 2000 report identified the mischief as "common law towing" that resulted from changes to by-laws that shifted the primary revenue of the program MLE agencies (that is, Bare Enforcement Agencies) from the property owner to charges attached to the towed vehicles. (Impark derives its revenue as the property occupant or manager and not through charges attached to towed vehicles.) The report concluded that the common law towing situation, firstly, negatively impacted municipal services and revenues and, secondly, caused considerable public confusion and dissatisfaction.

In the exercise of this right, tow companies act independently or in co-operation with MLE related companies and impound vehicles as the agent of the property owner. Although vehicles impounded pursuant to common law are not subject to a lien and must be released on demand and without payment, many vehicle owners are unaware of their rights and pay release fees that also include a payment to the MLE related company. Owners refusing to pay were initially threatened with small claims court action by the pound. More recently pounds have employed collection agencies and threatened to report vehicle owners who do not pay to credit bureaux, generating negative public response.

Common law towing has proven financially attractive and pervasive. ...

Common law towing is at the sole discretion of the tower/property owner. Common law towing generates demand on TPS resources for unnecessary stolen vehicle reports and attendance at pounds to require the release of vehicles towed under common law. The simultaneous operation of by-law and common-law enforcement causes confusion to the public and increased complaints to the police to investigate common law tows. The overall result is a negative public perception of private property enforcement. ...

Access to tow based fees has encouraged the parking enforcement industry to seek further revenues through 'look alike' parking tickets. An increasing number of property owners, agencies and tow companies now issue tickets resembling the Provincial Offences Act parking infraction notices designating themselves as payee. The significant number of instances where individuals have attempted to pay these 'look alike' tickets at the City and financial institutions support the conclusion that the public are misled by these tickets. In addition to the public unfairness created, staff believes 'look alike' tickets could be contributing to the decline in Provincial Offences Act ticket issuance on private property. ...

In conclusion, the combination of the property owners' continuing need for enforcement, the industry's dependence on activity based fees (e.g. administrative charges) and the absence of a cohesive legislative/managed environment has resulted in private property enforcement negative impacting on municipal services and revenues and causing considerable public confusion and dissatisfaction.

50. The May 30, 2000 report commented that the City did not have legislative authority to pass a by-law to prohibit an owner from using the common law right to remove vehicles from private property.

Under present provincial legislation the City cannot simply prohibit property owners from using the common law right to remove vehicles from private property and force them to use a by-law right. Elimination of the common law

right requires new provincial legislation. One of the recommendations in this report is that the City seek such private legislation.

51. The May 30, 2000 report did not make any recommendations with respect to the enforcement of parking contracts. Rather, the report made recommendations for three classes of by-laws regarding towing: by-laws regarding the removal of vehicles parked on private property "without consent"; the appointment of MLE officers; and amendments to licensing by-laws for towing, vehicle storage and parking enforcement organizations. On the latter point, the report commented:

As noted above, the major challenges facing the city is to minimize unregulated towing and 'look alike' tickets. Staff believe that amendments to the licensing by-laws can substantially reduce both unregulated towing and the incidence of 'look alike' tickets.

52. The report observed that by licensing parking enforcement agencies, complaints to the Parking Enforcement Unit or the Toronto Police Service could be collected as evidence for hearings before the Licensing Tribunal. Paragraph 150(11)(b) of the *Municipal Act, 2001* gives a council authority to impose conditions on a licence "upon the grounds that the conduct of any person, including the officers, directors, employees or agents of a corporation, affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity."

53. On July 11, 2000 the Administration Committee endorsed the May 30, 2000 joint report. Councillor Moscoe moved to prohibit pounds and towing companies from collecting any fee for private property towing and that the City assume the collection of all fees. In a report from the City Solicitor to the Licensing Sub-Committee dated August 8, 2000, the City Solicitor

commented that the City did not have legislative authority, as this would conflict with provincial legislation. A copy of the report from the City Solicitor to the Licensing Sub-Committee dated August 8, 2000 is attached as Exhibit "P" to this affidavit.

54. The City Documents disclose that the issues of towing and the use of parking enforcement agencies for non-consensual parking was dealt with extensively in 2000. Attached as Exhibit "Q" to this affidavit are copies of the following salient City of Toronto documents that formed background material to the recommendations of City Council adopted on October 12, 2000:

July 11, 2000—Report from City Clerk to Licensing Sub-Committee

August 10, 2000— Report from Toronto Police Services Board to Licensing Sub-Committee

August 17, 2000—Report from Chief Financial Officer and Treasurer to Licensing Sub-Committee

August 28, 2000—Report from Licensing Committee to Planning and Transportation Committee

Representations submitted to the Licensing Sub-Committee

Irwin Patterson(3)—Undated; September 2, 2000 and September 11, 2000

David Aird—Undated

John Weingest(2)—August 28, 2000 and September 8, 2000

Toronto Apartment Association—September 11, 2000

September 1, 2000—Report from Toronto Police Services Board to City Council

September 19, 2000—Report from Planning and Transportation Committee to City Council

55. On or about October 12, 2000, the Toronto City Council adopted the recommendations of the Planning and Transportation Committee contained in the September 19, 2000 report regarding issues of towing and the use of parking enforcement agencies for non-consensual parking. A copy of the salient portion of the Report of the Administration Committee—Program Enhancements and Consolidation of By-laws Affecting Parking Enforcement on Private Property—is attached as Exhibit “R” to this affidavit.

56. On June 20, 2002, the City of Toronto Council enacted a new City of Toronto Municipal Code Chapter 545, Licensing (the “New Licensing By-law”). A copy of the salient portions of the New Licensing By-law is attached as Exhibit “S” to this affidavit. The New Licensing By-law enacted some of the recommendations of the May 30, 2000 joint report, including the licensing of Parking Enforcement Agencies. The New Licensing By-law defined Parking Enforcement Services as applying to non-consensual parking.

PARKING ENFORCEMENT SERVICES — Any parking enforcement activities carried on in relation to vehicles parked on private property without the consent of the owner or occupant of such property, including but not limited to parking enforcement activities carried on by a business which:

- A. Employs one or more municipal law enforcement officers; or
- B. Issues any document requesting or demanding the payment of money in relation to vehicles parked on private property without the consent of the owner or the occupant of the property.

PARKING ENFORCEMENT AGENCY — A business which provides or performs parking enforcement services.

Growth in City Parking Revenue

57. City revenue from parking tags increased over the next few years. For the calendar year 1999—before the New Licensing By-law was enacted—the City experienced a

revenue shortfall of \$2,302,542 from its budget. Attached as Exhibit "T" to this affidavit is a copy of the August 25, 2000 report from the Chief Financial Officer and Treasurer to the Administration Committee.

58. For 2000, the City met a budget of \$58.1 million for parking tags (\$51,672,834 parking tag revenue; \$6,437,500 court cost revenue). Attached as Exhibit "U" is the March 26, 2001 report from the Chief Financial Officer and Treasurer to the Administration Committee.

59. For 2002 and 2003, the parking tag revenue remained close to \$50 million annually. Attached as Exhibit "V" is the May 1, 2003 report from the Chief Financial Officer and Treasurer to the Administration Committee. Attached as Exhibit "W" is the February 16, 2004 report from the Chief Financial Officer and Treasurer to the Administration Committee.

2004 City Revenue Problems—Reappearance of Look-alike Ticket Issue

60. The issue of look-alike tickets was raised again in early 2004. On April 15 and 16, 2004, Toronto City Council adopted a motion to refer the matter of "phony parking tickets and fraudulent invoices" to the Planning and Transportation Committee and to request that the Commissioner of Urban Development Services, in consultation with the City Solicitor and the Toronto Police Service, report with respect to an appropriate amendment to the licensing code "to eliminate the ability of private parking enforcement agencies to issue invoices or look alike tickets and restrict the issuance of tickets to legal City of Toronto tickets issued by certified municipal law enforcement officers." A copy of a report of the Planning and Transportation Committee dated April 19, 2004 is attached as Exhibit "X" to this affidavit.

61. In May 2004, the Toronto City Council voted to boost its annual revenues by about \$10 million by eliminating the discount for early payment of City of Toronto parking tags.

The Toronto Star reported that some councillors viewed this as a "money grab." Attached as Exhibit "Y" to this affidavit is a copy of a Toronto Star article published May 19, 2004. The article quotes councillors as recognizing a budget deficit and as viewing an increase in parking tag revenue as an appropriate means to help deal with the financial situation:

The changes are to begin in November and will generate \$1.4 million in the final two months of the year, said Councillor David Soknacki, city council's budget chief. ... Next year, the windfall grows to \$10 million over the full 12 months and the money will be used for general purposes, said Soknacki (Ward 43, Scarborough East). He noted that the city began its budget deliberations this year facing a \$344 million deficit and next year the initial shortfall could be \$400 million. While the city will be getting gas-tax revenues and more money for public health from the provincial government, and a rebate on the GST from Ottawa, it's not enough, Soknacki said. "It looks as if the 'new deal' agenda is there, but so are the city's expenses going up," he said. "So it's not a case of a (parking fine) grab just to grab money. There's a very real shortfall."

[Councillor Case] Ootes noted that the city now issues about 3.1 million parking tickets a year and collects fines of about \$70 million. He made no bones about the reason for yesterday's moves to increase the annual take. The city needs the money. "We know what our motives are; its partially revenue generation," he said. "We're becoming more and more dependent on those revenues."

Councillor Doug Holyday said if the city needs cash, councillors should have the courage to increase property taxes. "To set fines based on how much money we're short isn't right," said Holyday (Ward 3, Etobicoke Centre). "This is no more than a tax increase with a different name and it's charging people unfairly."

The argument that parking fines are set solely to act as a deterrent is losing validity as the city increasingly looks to fines as a cash cow, Councillor Howard Moscoe (Ward 15, Eglinton-Lawrence) said. "Frankly, I think shaking down motorists for parking fines has become more of an objective than we ever intended it to," Moscoe said.

62. On May 26, 2004, the Commissioner of Urban Development Services made a report with recommendations to regulate parking enforcement activities, including the issuance of look-alike tickets. A copy of the May 26, 2004 report of the Commissioner of Urban Development Services is attached as Exhibit "Z" to this affidavit. The Commissioner of Urban

Development Services report recommended further by-law restriction of parking enforcement activities by Bare Enforcement Agencies, but recommended that this not apply to parking garages, parking lots or parking stations, as such businesses had a legitimate interest to collect revenue and it was not necessary for consumer protection.

Where a person is licensed as a public garage engaged in operating a parking station or parking lot, a PPEA licence will not be required. However, such persons may only issue a document in the required form, requesting or demanding the payment of money from vehicles parked on that licensed property without their consent. This is provided the amount requested does not exceed the daily maximum posted for parking on the property, plus reasonable administrative charges related to the issuance of the notice.

Consumer Protection:

At this time, a prohibition on the issuance of any notice demanding payment other than a Part II parking infraction notice is recommended for those agencies providing an "enforcement for hire" service to the owners or occupants of property.

In the case of persons holding a public garage (parking lot or parking station) licence, it is recommended that the ability to issue private demand notices be strictly regulated, but not prohibited. This will attempt to achieve an appropriate balance between the ability of the licensee to carry on their legitimate business (including recovery of amounts owing) and assuring that the business is not conducted in a manner and using practices that are contrary to the public interest.

63. The Commissioner of Urban Development Services therefore recommended that holders of parking garage (parking lot or parking station) licence holders be regulated with respect to the appearance and content of notices and the amount charged for administrative costs, instead of being prohibited from issuing notices (which was the report's recommendation for Bare Enforcement Agencies). The recommendations were stated as follows:

It is recommended that:

(1) Municipal Code Chapter 545, Licensing, be amended in the interests of consumer protection, substantially as follows:

(A) by repealing the existing definition of "Parking Enforcement Services" and replacing it with the following:

Parking Enforcement Services – Any parking enforcement activity, including but not limited to, the monitoring of property, issuance of tags, tickets or payment notices, and authorizing the towing of vehicles, carried on in relation to vehicles parked on private property without the consent of the owner or occupant of such property, with the exception of those parking enforcement activities carried on by a person holding a public garage (parking lot or parking station) licence, or employee of such person, in respect to the licensed premises.

(B) by requiring that a Private Parking Enforcement Agency (defined as a person providing parking enforcement services) shall employ one or more municipal law enforcement officers; and in the course of providing parking enforcement services, issue only a parking infraction notice under Part II of the Provincial Offences Act, a Toronto Police Service tow card and other documents, as approved by the Chief of Police.

(C) by permitting the holder of a public garage (parking station or parking lot) licence to issue a document other than a parking infraction notice under Part II of the Provincial Offences Act for the purpose of requesting or demanding the payment of money in relation to vehicles parked on the licensed premises without the consent of the owner or occupant, provided that the licensee shall ensure that the document:

- (1) is not the same colour or design, or simulates the colour or design of an official City of Toronto Parking Infraction Notice;
- (2) clearly indicates in bold lettering, and in a font size larger than the rest of the notice (on the front and back of each notice); "This is not a City of Toronto Parking Infraction Notice";
- (3) clearly indicates the reasons why the notice is being issued by outlining the alleged wrongdoing;
- (4) provides dispute resolution options on the notice, indicating the address of the licensed premises, hours of operation, and a telephone number of the licensed premises where a member of the public may speak to the licensee, or an agent or employee of the licensee, for the purposes of resolving the dispute;
- (5) includes the business licence number on the face of the notice; and
- (6) does not request payment of an amount exceeding the daily maximum posted for parking on the licensed premises, and the reasonable administrative costs (to be posted on the licensed premises) associated with the issuance of the notice.

(D) by requiring that the holder of a public garage (parking station or parking lot) licence shall file an annual dispute resolution report for the licensed premises with the Executive Director, in a form satisfactory to the Executive Director, advising of the number and type of disputes arising from the issuance of such notices, and providing statistics as to the resolution of such disputes, including the number and amount of refunds/reductions provided;

(E) by requiring that the holder of a public garage (parking station or parking lot) licence post all administrative charges which may be imposed under clause 1C(6) above and indicate the activity related to the charge;

(F) for the purposes of these recommendations, the "issuance" of a document shall include: to personally hand a document to the vehicle owner or driver, to leave a document on the vehicle with the intention that the vehicle owner will recover it, to mail it to the vehicle owner, or to cause the document to be delivered to the vehicle owner in any other fashion.

(2) the Parking Enforcement Unit of the Toronto Police Service be requested to monitor and advise the Executive Director of Municipal Licensing and Standards of any complaints concerning the issuance of notices requesting or demanding payment by owners and occupants of property for parking on private property without their consent; and that the Commissioner of Urban Development Services report back to the Committee within two years' time on any further action that may be necessary to protect consumers; and

(3) the City Solicitor be authorized to introduce to Council, any bill necessary to give effect to the decision of the Committee.

64. The May 26, 2004 report was reproduced as background in the agenda documents for the Planning and Transportation Committee meeting for June 28, 2004, a copy of which is attached as Exhibit "AA" to this affidavit. Notwithstanding the recommendation of the Commissioner of Urban Development Services that only notices from Bare Enforcement Agencies be prohibited, the Planning and Transportation Committee, upon the motion of Councillor Moscoe, recommended the deletion of the exception for parking garages, parking lots and parking stations. The Planning and Transportation Committee made the following recommendation to the Toronto City Council, which is contained in item 6.7 of the Planning and

Transportation Committee Minutes dated June 28, 2004, a copy of which is attached as Exhibit "BB" to this affidavit.

The Planning and Transportation Committee recommends that:

(1) City Council adopt the staff recommendations in the Recommendations Section of the report (May 26, 2004) from the Commissioner of Urban Development Services subject to:

(i) deleting from Recommendation (1)(A) the words:

"with the exception of those parking enforcement activities carried on by a person holding a public garage (parking lot or parking station) licence, or employee of such person, in respect of the licensed premises."; and

(ii) deleting Recommendations (1)(C) to (1)(E) and renumbering (1)(F) as (1)(C);

65. As the matter came before the Toronto City Council, on July 21, 2004 the Toronto Star published an article entitled "City takes aim at fake tickets," a copy of which is attached as Exhibit "CC" to this affidavit. The article reported as follows:

The City of Toronto wants to be the only parking ticket game in town. There's a proposal before council to make putting anything but a city parking ticket on a windshield illegal. ... Right now, parking enforcement companies can issue their own tickets to parking violators in private lots, such as a hospital. The fine money goes to the hospital and the enforcement company. "They are stealing the public's revenue. They don't have a legal right to issue a fine," Moscoe said.

66. The By-law Amendment was enacted by the Toronto City Council on July 22, 2004. A copy of the By-law Amendment is attached as Exhibit "DD" to this affidavit. A copy of the relevant provisions of the City of Toronto Municipal Code Chapter 545, Licensing is attached as Exhibit "EE" to this affidavit.

67. A transcription of salient portions of the July 22, 2004 City of Council meeting is attached as Exhibit "FF" to this affidavit. Councillor Milczyn observed that the by-law amendment would amount to expropriation of money rightfully collected for use of parking space at a parking lot. Deputy Mayor Feldman observed that the bylaw amendment would expropriate parking lot business without compensation. "I think what Councillor Moscoe is trying to do, with due respect and I appreciate his passion, is attempting to squat [*sic transcript*] the fly with a sledge hammer."

68. On Saturday July 24, 2004, the Toronto Star published a feature article on the first page of Section B with a title in large bold print "4 tickets you shouldn't pay." The article included replicas of a Parking Infraction Notice and other notices, including Impark's Payment Notice. Attached as Exhibit "GG" is copy of the article. In the article, Councillor Moscoe is reported as saying that if Impark continues to issue Parking Notices "he'll get the police to charge them for breaking the bylaw."

Impark Practices Since the By-law Amendment

69. The position of Impark is that the By-law Amendment only applies to non-consensual parking and the Federal Court of Appeal has plainly ruled that, with respect to Impark Lots, a consensual contract is formed resulting in a contract debt and a contractual right to tow.

70. None of the three recited reasons for the By-law Amendment (deceptive ticket appearance, exorbitant administrative fees and collection agency practices) is applicable to Impark.

71. Impark continues to use Payment Notices that are distinct in look and feel from Parking Infraction Notices, including a different colour, paper, size and layout.

72. Impark's contractual charge for parking services not fully paid in advance are not materially different from those of the City of Toronto, considering differences in recovery rates (due to the City of Toronto's advantageous use of the *Provincial Offences Act* procedure and plate denial) and the fact Impark has to pay a fee to identify ownership information from licence plates which the City of Toronto does not have to pay.

73. As noted above, Impark uses the same collection agency to pursue parking debts as does the City of Toronto.

74. The By-law Amendment goes well beyond the measures recommended by the Commissioner of Urban Development Services in May 2004. Moreover, the By-law Amendment draws no distinction between parking lot businesses such as Impark, with the practices described above, and the Bare Enforcement Agencies whose practices appear (based on my review of City Documents) to have been the focus of concern of City of Toronto officials. Based on my experience in the parking business in Toronto and my knowledge of the manner in which Impark conducts its business and deals with customers (as described in this affidavit), I believe that, with respect to parking lot businesses, the By-law Amendment is unreasonable and is not required for consumer protection.

75. In my view, the Toronto City Council was improperly influenced by the mistaken claims of Councillor Moscoe that parking lot companies such as Impark had no legal grounds to collect parking debts and that they were "stealing the public's revenue" as he stated on the eve of the Toronto City Council meeting on this issue.

Impact if Regulation Applied to Impark

76. If the By-law Amendment were to apply to Impark, the net effect would be to harm consumers rather than protect them. As noted above, to keep stalls open for paying customers, Impark would have to tow violators much more frequently. This would result in the customer having to pay the City of Toronto parking ticket fine—which is expected to increase soon to \$30—plus a typical towing cost of about \$122.

77. Impark would lose a significant amount of parking revenue, which would be redirected into income for City of Toronto.

78. Currently, there is a state of confusion in the industry and for the public.


79. As noted above, Councillor Moscoe has indicated he is determined to have the Toronto police pursue Impark for violating the By-law Amendment. So far, the Toronto police have not taken any action with respect to the issuance of Payment Notices by Impark. Nonetheless, Impark has not received any assurance from the City of Toronto that it considers Impark's procedures to enforce Parking Contracts, which are consensual, not to violate the By-law Amendment, which applies to non-consensual parking.

80. Furthermore, the media coverage, as noted above, may be creating a perception among the public that they do not have to pay for parking services at Impark Lots.

81. To the extent Impark follows the restrictions in the By-law Amendment pending the resolution of this matter, it will lose income from Parking Contracts that Impark would not be able to recover.

82. For these reasons, Impark seeks, among other things, declaratory relief to achieve certainty that the By-law Amendment does not apply to its Parking Contracts, or alternatively, to have the By-law Amendment quashed as *ultra vires*.

SWORN BEFORE ME at the City
of Toronto, in the Province of Ontario
this 13th day of September, 2004.

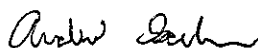

A Commissioner, etc.

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) GORDON CRAIG
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Karen Dale Scott, a Commissioner, etc.,
City of Toronto, for Fasken Martineau Dubouin LLP,
Barristers and Solicitors.
Expires October 19, 2005.

This is Exhibit "C" referred to in the Affidavit of Thomas G.W. Telfer
sworn December 23, 2009.



Commissioner for Taking Affidavits

Andrew William Graham, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law
Expires August 12, 2012.

2010 Edition

A Guide to the
Ontario Consumer
Protection Act

Elizabeth L. McNaughton
Parna Sabet-Stephenson



LexisNexis®

B. RIGHTS AND OBLIGATIONS APPLYING TO ALL CONSUMER AGREEMENTS

(a) Ambiguities to Benefit Consumers

Case law has generally interpreted ambiguities in consumer contracts drafted by suppliers to be in favour of consumers. The CPA now expressly states that any ambiguity that allows for more than one reasonable interpretation of a consumer agreement provided by the supplier to the consumer or of any information that must be disclosed under the CPA will be interpreted to the benefit of the consumer.⁶⁶

(b) Disclosure and Delivery of Information

The CPA imposes numerous disclosure and delivery obligations on suppliers, depending on the type of consumer contract the supplier is entering into with a consumer. If a supplier is required to disclose information under the CPA, the disclosure must be clear, comprehensible and prominent.⁶⁷ Therefore, including such mandatory information in the "fine print" of a document will not satisfy the disclosure obligations of the CPA. Where the supplier is required to deliver information to a consumer under the CPA, the information must (in addition to satisfying the disclosure requirements described above) be delivered in a form in which it can be retained by the consumer.⁶⁸

(c) Consumer Warranties

The Ontario *Sale of Goods Act*⁶⁹ provides for certain implied warranties and conditions that apply to all contracts of sale, unless the circumstances of the contract are such as to show a different intention.⁷⁰ The CPA states that any term or acknowledgement, whether part of the consumer agreement or not, that purports to negate or vary any implied condition or warranty under the *Sale of Goods Act* or any deemed condition or warranty under the CPA is void.⁷¹ If such a term or acknowledgement is a term of the consumer agreement, it will be severable from the agreement and will not be evidence of circumstances showing an intent that the deemed or implied warranty or condition does not apply.⁷² In addition, the CPA extends the application of the implied conditions and warranties applying to the sale of goods by virtue of the *Sale of Goods Act* to appertain, with necessary

⁶⁶ CPA, s. 11.

⁶⁷ *Ibid.*, s. 5(1).

⁶⁸ *Ibid.*, s. 5(2).

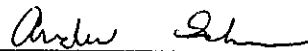
⁶⁹ R.S.O. 1990, c. S.1.

⁷⁰ *Ibid.*, ss. 13-16.

⁷¹ CPA, s. 9(3).

⁷² *Ibid.*, s. 9(4).

This is **Exhibit "D"** referred to in the Affidavit of Thomas G.W. Telfer
sworn December 23 , 2009.



Commissioner for Taking Affidavits

Andrew William Graham, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law
Expires August 12, 2012.

Thursday 26 September 2002

INTRODUCTION OF BILLS

CONSUMER PROTECTION STATUTE LAW AMENDMENT ACT, 2002 / LOI DE 2002 MODIFIANT DES LOIS EN CE QUI CONCERNE LA PROTECTION DU CONSOMMATEUR

Mr Hudak moved first reading of the following bill:

Bill 180, An Act to enact, amend or revise various Acts related to consumer protection / Projet de loi 180, Loi édictant, modifiant ou révisant diverses lois portant sur la protection du consommateur.

The Speaker (Hon Gary Carr): Is it the pleasure of the House the motion carry? Carried.

The minister for a short statement?

Hon Tim Hudak (Minister of Consumer and Business Services): I'll defer to minister statements.

Monday 28 October 2002 *Lundi 28 octobre 2002* *The House met at 1845.*

ORDERS OF THE DAY

CONSUMER PROTECTION STATUTE LAW AMENDMENT ACT, 2002 / LOI DE 2002 MODIFIANT DES LOIS EN CE QUI CONCERNE LA PROTECTION DU CONSOMMATEUR

Mr Hudak moved second reading of the following bill:

Bill 180, An Act to enact, amend or revise various Acts related to consumer protection / Projet de loi 180, Loi édictant, modifiant ou révisant diverses lois portant sur la protection du consommateur.

Mr Hudak: A summary of my introduction.

It's a new proposed Consumer Protection Act that combines six -- I mentioned the disparate pieces of legislation -- overlapping pieces of legislation into one single bill that's a modern legislative framework. This will provide clear rules for businesses and consumers and a level playing field for businesses as well.

The new proposed act also brings up to date the Real Estate and Business Brokers Act, the Motor Vehicle Dealers Act and the Travel Industry Act. These three acts, as all of us in the House are aware, cover some of the biggest purchases individuals ever make in their lives: a home, a car or a nice vacation. That's why it's important for us to have protections in place when making that substantial and expensive investment and give confidence to consumers purchasing in those fields.

In short, Bill 180 will provide a clear, efficient, flexible, up-to-date set of consumer protection rules for consumers and businesses in Ontario. The member for Oak Ridges wants to know some of the specifics to help consumers.

Mr Sampson: Get into the specifics right away.

Hon Mr Hudak: I'll jump into the specifics, if that's what you want me to get to.

The member for Mississauga will recall that I said earlier that when the laws were introduced in the 1960s and 1970s, the expansion of the Internet economy and services was not really contemplated at that point in time. So we are expanding consumer protection to services as well as goods. The service economy has grown to the point that the majority of transactions are actually in the service economies as opposed to the traditional exchange of goods: cable, cell phone service, lawn care, home repairs. This legislation makes sure our framework extends from the goods sector into the services sector to create that level playing field.

It would extend provisions to leases. Leases used to be almost exclusively business-to-business arrangements, but now, as the Speaker well knows, consumers commonly lease items such as cars, computers and other significant purchases.

Importantly as well, it would require clear disclosure. There's always a good piece of advice that I think we say over and over to constituents, to our own families and to ourselves: read the fine print. Many unscrupulous operators hide important information in that fine print or use ambiguous language that is very hard to interpret. The proposed Consumer Protection Act, 2002, also known as CP21, would help combat this by requiring that information to be disclosed clearly and prominently and not hidden in the fine print.

The proposed legislation also specifies that if the language in a contract provided by a business is ambiguous, that would now be interpreted in the interests of the consumer -- it's a very important development. While it's always important for the consumer to read the entire contract before signing it -- as a matter of course, it's common sense -- this provision would require the businesses to be clear and upfront with a potential customer.

As I mentioned -- so with services, so with the Internet -- it will extend protections to Internet exchanges. We all know that the Internet has exploded in recent years, providing incredible speed and convenience, and revolutionizing the way we do business. If you want to book that hotel room in Niagara, you can do so over the Internet. If you want to buy your wife that particular bottle of wine that she enjoys, you can do that over the Internet.

In fact, three years ago the ministry didn't even track consumer complaints about Internet transactions, because at that time there were so few of them. Now we receive about 250 Internet complaints per year, and that's just whom we hear from; there would likely be more than that who just have not known who to

18 STEPHANIE GRAHAM et al.
Plaintiffs

-and- IMPERIAL PARKING CANADA CORPORATION, carrying on
business as IMPARK
Defendant

Court File No. CV-09-00379652-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

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business as IMPARK
Defendant

Court File No. CV-09-00379652-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO**

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