

INSURANCE LAW BULLETIN

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Licensing Enforcement against Bankrupts

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With its recent decision in *407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)*^{*} the Supreme Court of Canada has extended the scope of legal liabilities that a person may discharge through bankruptcy proceedings. The case involved the question of whether the debt enforcement provisions of Ontario's *Highway 407 Act* conflicted with the federal *Bankruptcy and Insolvency Act* ("BIA").

STATUTORY LICENCE SUSPENSION REGIMES

Ontario's Highway 407 is an open-access private highway operated by 407 ETR Concession Company Limited ("ETR"). Under s. 22(1) of the *Highway 407 Act*, if a person failed to pay a toll debt, ETR would notify the Ontario Registrar of Motor Vehicles. Upon receipt of this notice, the Registrar was required to refuse to issue or renew the debtor's vehicle permit until he or she was notified by ETR that the debt and related fees and interest were paid. This arrangement is similar to that which exists under Ontario's *Highway Traffic Act*, where upon notice of a failure to pay a judgment debt arising from a motor vehicle accident, the Registrar is to suspend the judgment debtor's driver's licence until the debt is paid off.

Historically, courts had held that a debtor who declared bankruptcy and was subsequently discharged was not entitled to automatic reinstatement of a licence that was suspended via a statutory mechanism triggered by an unpaid debt. The rationale was that a licence, such as a driver's licence, did not constitute part of the bankrupt's property, and thus was not subject to the bankruptcy proceedings. Bankruptcy might stop creditors from enforcing outstanding debts against the bankrupt, but it did not prevent licencing agencies from relying on unpaid debts to deny the bankrupt a licence.

More recently, these types of statutory schemes have come under criticism from bankruptcy courts. There was a growing body of opinion that while a licence might not technically be part of a bankrupt's property, the practical effect of statutory licence suspension regimes was to indirectly enforce a debt that could not be enforced directly. Schemes that involved driver's

^{*} 2015 SCC 52.

licences or vehicle permits came under particular scrutiny, as it was believed that for some debtors the need to be able to legally drive would be so compelling that they would be forced to pay off a debt that they had been legally excused from through bankruptcy.

THE SUPREME COURT'S DECISION

The Supreme Court's decision in *407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)* has essentially confirmed these criticisms and, in doing so, has probably ended the effectiveness of statutory licence suspension regimes in the face of the licence-holder's bankruptcy. To briefly state the facts of the case, the applicant Matthew Moore had accumulated a toll debt arising from his use of the 407. He failed to pay the toll debt and ETR notified the Registrar. When the registration of his vehicle expired, the Registrar refused to renew Mr. Moore's licence plates. In the interim, Mr. Moore had entered into bankruptcy and obtained a discharge. He sought and obtained an order that his toll debt had been released by his discharge and an order compelling the Registrar to issue his vehicle permits.

The Supreme Court applied the doctrine of federal paramountcy. Paramountcy is a legal doctrine which states that when the operational effects of provincial legislation are incompatible with federal legislation, the federal legislation must prevail and the provincial legislation is rendered inoperative to the extent of the incompatibility. In this case, the federal government exercises an exclusive jurisdiction over matters of bankruptcy. The Court held that there existed an operational conflict between the *Highway 407 Act* and the *BIA*. The *BIA* holds that a discharge from bankruptcy releases a debtor from claims that are provable in bankruptcy. Under the federal law, the debt is not enforceable; under the provincial law, it is (in a fashion). The Court went on to hold that the operation of the provincial law frustrated the federal government's intention of providing discharged bankrupts with the ability to financially rehabilitate themselves. The Court noted that had Parliament wished to exempt ETR's toll debt from the bankruptcy process, as well as from the consequences of a discharge, it would have done so expressly in the *BIA*. It was therefore held that the *Highway 407 Act* was constitutionally inoperative to the extent that it is used to enforce a provable claim that has been discharged pursuant to the *BIA*.

The Supreme Court's insistence that Parliament would need to carve out exceptions to the *BIA* is noteworthy. Many statutory licence suspension provisions specifically provide that a discharge in bankruptcy has no effect on them. Such provisions are likely ineffective after this decision. The Supreme Court has made clear the intent of bankruptcy legislation: to allow people a "fresh start" when they are discharged from bankruptcy.