

**IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY**

Citation: Brannen (Re), 2007 NSSC 349

Date: November 28, 2007

Docket: B 30228

Registry: Halifax

District of Nova Scotia
Division No. 4 - Yarmouth
Court No. 30228
Estate No. 51-917041

**IN THE MATTER OF THE BANKRUPTCY OF
KEMPTON TRENT BRANNEN**

D E C I S I O N

Registrar: Richard W. Cregan, Q.C.

Heard: November 23, 2007

Present: Robert McCuaig representing the Trustee,
McCuaig & Company Inc.

Stephen Dickey representing the Office of the
Superintendent of Bankruptcy

Karen Henderson representing Canada Revenue Agency

- [1] Kempton Trent Brannen is a fisher. He resides in Woods Harbour. He made an assignment in bankruptcy in 1992 and was discharged the following year. A significant portion of his debt at that time was income tax.

- [2] Sometime thereafter Mr. Brannen became involved with fellow fishers in an illegal conspiracy regarding lobsters. He was prosecuted, but was spared from imprisonment by providing to the authorities information regarding the other conspirators. For this he has been and will continue to pay a high price. He is ostracized from the fishing community. No one will provide him with work, except for a cousin who engages him as his helper.

- [3] As part of the resolution of this conspiracy he and presumably the others were summarily assessed for income tax for the years 1999, 2000, and 2001 on their ill-gotten income. The amount involved for him is about \$220,000, of which \$105,000 is for penalties. There was also a claim for the balance of 1996 tax of \$97.00.

- [4] Because of this indebtedness he made a second assignment on December 18, 2006. He is now before this court asking for his discharge. The Trustee

recommends that his discharge be suspended for three months, the usual time for second time bankrupts.

[5] Representatives of the Superintendent's Office and the Canada Revenue Agency appeared. They recommend that he be suspended for 18 to 24 months during which he would report to the Trustee regularly, pay surplus income to his estate and comply with all requirements under the *Income Tax Act*. They submit that these requirements would be of assistance to him in the rehabilitation process.

[6] Mr. Brannen expects to be working for his cousin in the current south western lobster season. After consultation with someone at the Canada Revenue Agency he has arranged that his cousin and any other employers will make appropriate withholdings for income tax from his pay. In effect, although not in so many words, he undertook before the court to have all employers make such deductions and to file in a timely way all income tax returns.

[7] The representatives of the Superintendent's office and CRA are right in

being concerned that Mr. Brannen's rehabilitation be addressed in setting the terms of his discharge. They in cross examination of him suggested to him that there would be advantage to him in his rehabilitation to be subject to the further supervision they proposed. His response was that his doing what he has undertaken to do before the court is sufficient for his rehabilitation. What they proposed is not necessary. Such also is the position of the Trustee.

[8] Although what these representatives propose is often appropriate, such as with business or professional people who live beyond their means at the expense of their fellow citizens, or people who are simply neglectful in managing their affairs, I do not think they are in Mr. Brannen's situation.

[9] His tax liability results from a criminal conspiracy for which he continues to be punished by the society in which he has lived all his life. His income will be modest, as will be his tax liability. His compliance with his undertakings will provide the rehabilitation appropriate to his circumstance. If he fails in these undertakings, he may well be liable to having his discharge annulled.

[10] I therefore determine that Mr. Brannen shall be entitled to be discharged on February 23, 2008. The order is to recite that he had made the undertakings to have his employers make appropriate payroll deductions and to file in a timely manner all tax returns.

[11] At the beginning of the hearing I expressed concern that the letter to the court from the Superintendent's office outlining its proposals was dated only three days before. Mr. Brannen had not received it before coming to court. Fortunately the Trustee had and reviewed it with Mr. Brannen.

[12] It is important that pre hearing written submissions be copied to bankrupts so that they are received by the bankrupts at least a couple of days before the hearing. They must have a proper chance to review them. If not, a postponement and some compensation for expenses may be necessary.

R.

Halifax, Nova Scotia
November 28, 2007