

District of Nova Scotia
Division No. 01 - Halifax
Court No. 26192
Estate No. 51-091162

Date: December 17, 2003
Docket: B 26192
Registry: Halifax

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY
(Citation: Wheeler (Re), 2003 NSSC 246)

In the Matter of the Bankruptcy of Robert Ritchie Wheeler

DECISION

Registrar: Richard W. Cregan, Q.C.

Heard: November 17, 2003

Counsel: Bankrupt, Robert Richard Wheeler representing himself
Joseph A. Wilkie, CMA, CIRP, representing the Trustee,
WBLI Incorporated

- [1] Robert Ritchie Wheeler has applied to the Court to be discharged from bankruptcy.
- [2] Mr. Wheeler is forty years of age. He has been practicing law for fifteen years. He is married and has four children. He has been the sole source of income for his family.
- [3] He began his practice as an employee of a law firm. He was paid a salary. Withholdings for income tax were made by the firm. However, sometime in 1994 or 1995 his status with the firm changed so that he received his income from the firm by way of draws. The firm did not withhold any of his income for income tax. Later he formed a partnership with another lawyer.
- [4] From the time of his going on the draw system he has been behind in making regular payments for income tax. He became so quickly in arrears that he made a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, (the "Act") late in 1997. As he was unable to comply with the proposal, he made an assignment in bankruptcy on January 31, 2001.

[5] At the time of his assignment his debts were:

Bank of Montreal	\$4000.00
National Bank	\$1000.00
Canada Customs and Revenue Agency	\$245,000.00

[6] Also he has been the guarantor of a mortgage with the Bank of Montreal on his family home for \$124,000.00. The home is in his wife's name.

[7] His annual net income since 1996 has ranged from \$80,000.00 to \$120,000.00. In 2002 it was \$87,239.00. He said he expected a similar net income this year.

[8] Presently he is paying fifty percent of his draws to Canada Customs and Revenue Agency ("CCRA"). He is still paying on the assessment for 2002 and has made no payments for 2003.

[9] He admits that from the time he commenced receiving draws he fell behind in making appropriate payments on account of income tax. The money was used for "things around the house". He did not make enough for the life style he was providing his family. He has had no extraordinary necessary

expenses. His family are all in good health.

- [10] The Trustee has recommended he be given a conditional discharge, that is conditional on his paying \$5,136.00 by monthly payments of at least \$428.00. This is based on surplus income as determined by the Superintendent's Standards.
- [11] The authorities and the practice indicates that the Court should pay special attention to a number of factors when considering the conditions for discharge for a bankrupt, who was substantially indebted to CCRA. This is applicable whether or not CCRA contests the discharge. This obviously is a case where such special attention is appropriate.
- [12] My predecessor, Registrar Hill, in *Re Hardy* (1999), 14 C.B.R. (4th) 201, quoting from a previous, but unreported decision of his, *Re White*, in which he reviewed the factors to be considered when there is a significant income tax debt, noted the following at p.209.
- a. Whether the bankruptcy came about as a result of an unhappy "accident", or whether there has been a persistent ignoring of the income tax obligation: Re Stewart (1991), 4 C.B.R. (3d) 240 (B.C.C.A.); Re Kritzinger (1991), 6 C.B.R. (3d) 157 (B.C.S.C.);

- b. Whether or not the purpose of the bankruptcy was to escape the income tax obligation: Re Stewart (supra); ReKritzinger (supra);
- c. The personal circumstances of the bankrupt at the time of discharge, that is, the bankrupt's ability to contribute towards a conditional order: Re Somers (1994), 28 C.B.R. (3d) 140 (Ont. C.J.);
- d. Whether the bankrupt's present lifestyle is such that the Court can conclude that the bankrupt is attempting to maintain a high standard of living at the expense of his or her creditors: Re Somers (supra)
- e. Whether the bankrupt has since the bankruptcy continued to ignore the obligation to pay income tax, or whether the bankrupt has learned from the previous error and maintained his or her income tax obligation up to date.

[13] I have read other cases on this point and found the following relevant to the present situation;

Re Waffle (1998), 7 C.B.R. (4th) 13 (Saskatchewan, Registrar

Herauf)

The bankrupt had been indebted to Revenue Canada for unpaid income tax of \$55,026.90. The cause of this indebtedness admitted by the bankrupt and concurred in by the Trustee was excessive personal spending, or to quote the Registrar at page 13, "In other words he used the funds that should have gone for payment of his tax liabilities for his personal purposes".

The Registrar imposed as the condition of discharge that he, for a period of two years, make regular installment payments on his self-employment income. The purpose

of this condition was, quoting at page 14, “...to bring some discipline into the process and ensure that the bankrupt lives up to his commitment...”.

Re Taves (2000), 21 C.B.R. (4th) 301 (Alberta, Registrar Quinn)

The bankrupt was a self-employed professional engineer. He had been substantially indebted to C.C.R.A., his major creditor because of various personal and employment problems. It was argued that, because of other demands on his income, particularly child support, his proper conduct upon making the assignment in bankruptcy and the difficulty a condition would cause in his business, he should be granted an absolute discharge. However, the Registrar concluded his conduct in not paying his taxes warranted a conditional discharge. Not only was he required to pay a substantial sum over 25 months to the estate, but, over the same period he was required to make quarterly installments on his income tax and to file returns on time.

- [14] As Mr. Wheeler on a previous occasion made a proposal, a fact covered by s.173 (1)(j), of the *Act*, his discharge is governed by s.172(2) of the *Act*. This gives the Court three options, to refuse discharge, to suspend the

discharge, or to impose a condition by way of performing certain acts, paying money, consenting to judgment or complying with certain terms.

[15] Mr. Wheeler has had the good fortune of earning a good income, sufficient to provide reasonably for his family, during the past several years. His problem has been to control his cash flow so as to make timely payments on account of income tax. Needs and wants took priority over such payments. These bankruptcy proceedings have wiped away almost a quarter of a million dollars of back taxes. Consideration must be given to his present situation.

[16] His notice of assessment for the 2002 tax year dated June 9, 2003 showed that nothing had been paid on account of taxes for 2002 of \$31,332.49 and there was a previous account balance, presumably from 2001 of \$25,923.38, for a total of \$57,255.87.

[17] He indicated at the hearing that he was still paying on the 2002 balance and had paid nothing on account of 2003 taxes.

[18] He remains in a difficult situation, notwithstanding, he has been subject to bankruptcy proceedings since early 1998. He does not seem to be able to catch up. He is in need of ordering his priorities and discipline in managing his cash flow.

[19] I make the following observations applying the principles quoted from *Re Hardy*.

- a. Mr. Wheeler has consistently fallen behind in paying his income tax obligations since he began receiving his income on a draw basis. To say that he has been persistent in ignoring his obligations is to put the matter too strongly. There have been no extenuating circumstances to justify this falling behind.
- b. He had no significant debts but income tax.
- c. He is able to pay the modest amount of money recommended by the Trustee. It is also appropriate that he be required to bring his present obligation to CCRA up to date.
- d. He has four young children. Their demands can be substantial. Although he has a good income, there is no suggestion that his lifestyle is so high that he is maintaining it at the expense of his creditors. His problem is more one of discipline in managing his cash flow.
- e. As mentioned above, he is still significantly behind in paying post bankruptcy income tax. He is subject to an arrangement whereby 50% of his draws are paid directly to CCRA. It is to be hoped that he will be able in time to significantly reduce outstanding balances, but he may need some discipline imposed on him.

[20] I accept the Trustee's recommendation that he pay into the estate \$5,136.00 by 12 monthly payments of \$428.00.

[21] However, my comments immediately above and the points made in *Re Waffle* and *Re Taves*, say that this is not enough. A further condition directed at imposing discipline on Mr. Wheeler and emphasizing the responsibility of all with incomes to pay their taxes is necessary.

[22] Mr. Wheeler shall be entitled to a discharge upon payment to the Trustee of \$5,136.00 by 12 month installments of \$428.00 and upon his satisfying the Trustee that all outstanding assessments for income taxes to the end of 2003 are paid and that all required installments for 2004 are paid.

R.

Halifax, Nova Scotia

December 17, 2003