IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY
Citation: Cochran (Re), 2006 NSSC 242

Date: August 2, 2006
Docket: B 29504
Registry: Halifax

District of Nova Scotia
Division No. 1
Court No. 29504
Estate No. 51-121449

In the Matter of the Bankruptcy of James Robert Cochran

D E C I S I O N

Registrar:	Richard W. Cregan, Q.C.
Heard:	July 14, 2006
Counsel:	Peter J. Sullivan representing the Attorney General of Canada
	Joseph Wilkie representing the Trustee, WBLI Inc.
	James Robert Cochran, the Bankrupt, representing himself

Introduction

[1] James Robert Cochran made an assignment in bankruptcy on September 8, 2005. He is now applying for his discharge. The Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada objects to his discharge.

Facts

[2] Mr. Cochran attended Mount Allison University from 1990 to 1994. He financed this education in part with Canada Student Loans and with loans under a provincially sponsored student loan plan. The first set of loans have a balance of $19,681.39 for principal and $8381.16 for interest for a total of $28,062.55. The Attorney General's objection relates to these loans. The second loans total $12,740.40. Also his liabilities include $50,000 owed to Atlantic Canada Opportunities Agency ("ACOA"). These loans together with a small consumer debt total $90,589.90 and constitute his total liabilities at the time of his assignment.

[3] He graduated in 1995 with a BA in psychology and sociology. He then worked at various jobs and attempted to operate an adventure travel

company with a partner. This company was financed through ACOA. It apparently defaulted. He was called upon presumably on the basis of a guarantee; thus the above mentioned indebtedness to ACOA. He then obtained employment as a youth counselor in the United States.

[4] His present position is that of program director at a wilderness school for adjudicated youth in New Hampshire. His is paid annually $38,000 US. The position has been a year to year appointment. His visa status for living in the United States is similarly subject to annual renewal. Both have been renewed in the past month. His status is now secured for a year. He has no dependents.

[5] He has taken some course work towards a masters degree in mental health counselling. He has an enjoyable job and makes use of his education. However, he wants to move on to other things and in particular return to Canada.

[6] He was granted interest relief from December 1, 1995 to April 30, 1998 for the Canada Student Loans. He has not made any voluntary payments on

them. The Canada Student Loans were turned over to a collection agency on December 2, 1999. During the next several months there were several follow ups. A period without contact followed. In July 2002 Mr. Cochran contacted the agency. Then contact was lost until October 2003. He made a settlement proposal on October 21, 2003 whereby he would pay $12,000 in full settlement of the claim. This was rejected by a letter of February 6, 2004.

[7] The matter was then referred by the Crown to a law firm in New Hampshire. There were numerous communications, but nothing conclusive resulted. He sought advice and made his assignment in bankruptcy.

[8] The Trustee after converting his income to Canadian Dollars has determined that his surplus income is $362.00 per month.

[9] The Trustee recommends that he pay as a condition of his discharge $1500 at the rate of $375 per month. He has already paid $5200 into his estate. The Attorney General is prepared to compromise the claim with monthly payments of $400 for 36 months, that is $14,400 in total.

Law

[10] I reviewed the applicable law on this matter in *Brunt, Re* 2006 NSSC 237, issued July 28, 2006.

[11] The thrust of my review is that the case law particularly that centering around *Burke, Re* (1992), 14 C.B.R. (3d) 216 (N.S., Saunders J.) and *Van Steenes, Re* (1992), 13 C.B.R. (3d) 131 (B.C.S.C.) must be taken as qualified by the amendments to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the "Act"). In effect I expressed the view that subjecting a bankrupt to a period of ten years before he or she could be discharged from liability for student loans addressed the same concerns as were addressed in these two cases. It should only be in extraordinary circumstances after waiting this period that a bankrupt should be still required to pay a substantial amount of money reflecting the outstanding student loans, or to pay any amount beyond his surplus income.

[12] Counsel for the Attorney General strongly urged that I should apply *Cummings, Re* (2003), 46 C.B.R. (4th) 249 (B.C. Goepel J.). The bankrupt had received an absolute discharge from the Master, but on appeal Goepel J.

found that the Master was in error in only considering the bankrupt's present circumstances and not also considering his future capacity to make payments. He imposed as a condition of discharge that he pay $9000, against a student loan of about $29,000.

[13] Goepel J. did not engage in any discussion of Subsection 178(1)(g) as I did in *Brunt, Re* He simply said that, as the assignment was made just ten years after the bankrupt had ceased to be a student, it did not apply and that the discharge must therefore be considered under the general principles of the *Act*.

[14] He then cited *Legault, Re* (1994), 88 B.C.L. R. (2d) 242 (B.C.C.A.) which stands for the same position as do *Burke, Re* and *Van Steenes, Re*.

[15] I think that one cannot so simply dismiss the 1997 amendments to the *Act*. I think they were clearly passed not so much to override the case law mentioned but to address in another way the problem which these cases addressed. The evils intended to be remedied by these amendments I would simply characterize as the abuse of the *Act* to avoid liability for student loans

which the bankrupt, given reasonable time, should be able to pay.

[16] The extend to which the amendments are effective in addressing this evil should be considered in discharge applications and may well qualify the impact of this case law.

[17] The waiting for ten years before one can make an assignment in bankruptcy can seriously affect one's course of action. If one is ambitious and reasonably successful, one will make efforts to pay off the loans, knowing that bankruptcy is not desirable on one's record. On the other hand evidence that one has not during these ten years made sufficient income to be reasonably expected to have made payments is very relevant in determining whether in the future there will be sufficient income to impose a conditional order.

[18] Also I noted in paragraph 13, at page 252, Goepel J.'s approval of the reference in *Legault, Re* to the four factors in *Van Steenes, Re.* However, let me quote the last sentence of this paragraph:

> Mr. Justice Hollinrake cautioned that those considerations cannot be given such emphasis that the conditions attached to a discharge

will “tie a millstone around a man’s neck”.

[19] Mr. Cochran had made some efforts to settle the matter before making an assignment in bankruptcy. He may be faulted for not responding to or maintaining contact with the administration. At the same time the administration may be criticized for not responding to him in a timely manner. He offered to settle for $12,000. This was to be financed by a private loan. This may well have been in a practical way a good offer. However, it is understandable that administrations often look at a wider picture, rather than do what appears very reasonable on an individual basis.

[20] When he was trying to establish himself after his business failure he would have had little ability to make payments. It must be noted that student loans constitute only about 45% of his liabilities. The remaining 55% are business liabilities. With his present income he has a small surplus. His education has been used in his present work. His life style is modest and confined by his circumstances. He is able, ambitious and anxious to move on in life freed of this obligation. He has taken some courses to improve his education. More will be required before he can be qualified for significantly

better paid work. This may take a few years. I do not think that his circumstances are so exceptional that after bearing the burden of not being able to be discharged from this indebtedness for over ten years, he should be expected to further contribute a large amount to his estate. He should not be burdened much further; however, I think he can pay and should pay something over the next year.

[21] The *Superintendent's Directive No. 12 - Terms of Discharge* provides that a conditional discharge may be for a period up to twelve months. This is a directive to the trustees and is not binding on the court, but nevertheless provides good guidance. Twelve months is often not asked of bankrupts, but I think in the present circumstances, requiring Mr. Cochran to contribute a further $4500 to his estate as the condition of his discharge is the appropriate disposition of this application. This could be by 12 monthly payments of $375. It asks something of Mr. Cochran beyond what is normally proposed by trustees, acknowledges the older cases, but at the same time it recognizes the qualifications which the 1997 amendments I think have put on them. To ask for more considering the uncertainties in Mr. Cochran's future, might be tying a "millstone" around his neck.

[22] Mr. Cochran shall be entitled to his discharge upon payment of $4500 to his estate.

R.

Halifax, Nova Scotia
August 2, 2006