IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY
**Citation:** Crawford (Re), 2010 NSSC 94

**Date:** March 9, 2010
**Docket:** B-23637
**Registry:** Halifax

District of Nova Scotia
Division No. 01 - Halifax
Court No. 23637
Estate No. 51-091965

In the Matter of the Bankruptcy of Wendy Crawford (Alcorn)

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**D E C I S I O N**

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| **Registrar:** | Richard W. Cregan, Q.C. |
| **Heard:** | February 19, 2010 |
| **Present:** | Wendy Crawford, the bankrupt representing herself. |
| | Bruce MacLeod representing the Trustee, BDO Canada Limited |

[1] This is an application by Wendy Ellen Crawford to change the date of her discharge from bankruptcy.

[2] Ms. Crawford and her former husband, James Alexander Alcorn, made an assignment in bankruptcy on March 6, 2001.

[3] The Trustee's Section 170 Report dated November 2, 2001 recommended that her discharge be suspended for three months due to a previous bankruptcy and that she pay surplus income of $1900.08 with 12 monthly payments of $158.40. An order adopting this recommendation was granted on January 8, 2002. Efforts were made by the Trustee to collect but to no avail.

[4] In June 2003 she made an application to vary the terms of her discharge. The Trustee asked for information regarding her circumstances so that a new report could be prepared. She delayed providing this information until August 2, 2005. The application to vary was resumed on September 16, 2005 and she was granted an absolute discharge.

[5] She says that Mr. Alcorn appeared at the discharge hearing in 2002 which had been set down for both of them, but for some reason she did not. He satisfied the court that he no longer had surplus income and was granted an absolute discharge. She suggests that had she appeared at that hearing as did Mr. Alcorn, she would also have been able to show she no longer had surplus income and would also like him have received an absolute discharge. She eventually received an absolute discharge without paying any surplus income in 2005. She thinks that her discharge should be back dated to the same date as Mr. Alcorn's discharge. This would result in her status with the credit reporting agencies being upgraded.

[6] She has not provided me with any legal authority that I can do this for her. The only authority I can think of is Subsection 187(5) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (*BIA)*

> Every court may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

[7] I have reviewed the commentary on this Subsection in *The 2010 Annotated Bankruptcy and Insolvency Act* (Houlden, Morawetz & Sarra) at I§24, pages 865-869. The points therein relevant to this matter may be summarized:

- its jurisdiction should be “sparingly exercised”,

- applications should be made “promptly”,

- it should not be used as a mode of appeal after the regular appeal period has passed,

- there must have been a significant change in circumstances on the bankrupt’s part since the granting of the order.

[8] Ms. Crawford may well have received an absolute discharge, if she had appeared with Mr. Alcorn in 2002. However, it was she who decided not to come. She made an application to vary the order. However, it took her two years to provide the Trustee with the information to which it was entitled to enable it to respond to her application.

[9] Relief under Subsection 187(5) is discretionary, but it must be judicially tempered by principles developed in the case law. The commentary mentioned above makes it clear that one must be prompt in applying for it. This implies also that one must respect the proceedings under the *BIA*. More than responding at one’s convenience is needed. She has been responsible for the delay throughout. To grant the relief Ms. Crawford has sought would be in the circumstances an improper exercise of the discretion

I have under this subsection and would set a poor precedent.

[10] This application is denied.

R.

Halifax, Nova Scotia
March 9, 2010