

CANADA  
PROVINCE OF NOVA SCOTIA  
COURT NO. 24155  
ESTATE NO. 51-074988

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**IN BANKRUPTCY**  
**IN THE MATTER OF THE BANKRUPTCY OF**  
**CHRISTOPHER JAMES WHITE**

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

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Cite as: White (Re), 2001 NSSC 224

<b>HEARD BEFORE:</b>	Tim Hill, Registrar in Bankruptcy
<b>DATE HEARD:</b>	November 19, 2001
<b>ORAL DECISION:</b>	November 19, 2001
<b>WRITTEN DECISION:</b>	January 7, 2002
<b>COUNSEL:</b>	Mark Rosen representing the Trustee, PricewaterhouseCoopers  Darrin Ulley representing the Superintendent of Bankruptcy

This is an application to tax a trustee's account.

The debtor made a consumer proposal which was accepted by his creditors and PricewaterhouseCoopers ("PWC") was appointed Trustee under the proposal.

At some point during the proposal Mr. White defaulted. The Act makes it clear where the payments on a consumer proposal are to be made monthly (as was the case here), and where the debt is in default to the extent of three months of payments the proposal is deemed to be annulled. There is no choice in this and there is no discretion in either the trustee or the court to relieve against the annulment: Re Schrader, (1999) 13 C.B.R. 4<sup>th</sup> 256 (N.S.S.C.)

I believe that PWC has reported that somewhere around April or May the debtor was three months behind in his payments. The evidence as to the exact date was unclear, but PWC can determine the exact date applying the principle expounded upon here.

The Superintendent objects on this taxation indicating that this court should review the trustee's fee given that the trustee accepted payments after the deemed annulment.

I find that PWC is entitled to a fee, but that fee can only be based on those amounts received by PWC under the provisions of the consumer proposal. Those amounts received after the consumer proposal was deemed to be annulled are not be subject to a trustee's fee.

What should PWC do with the monies received from the debtor after the default?

It seems to me that the debtor did send those monies to PWC with the intention those monies be distributed to the debtor's creditors. To that extent the trustee acts as the debtor's agent. PWC as agent has an obligation to disburse those monies to the creditors as was the intention of the debtor.

In summary, the fee of PWC should only be based on monies received from the debtor while the proposal was extant. The fee is taxed and allowed in the appropriate amount, with leave to reapply to me to set a specific number if PWC and he Superintendent cannot agree what that should be. I also opine that the excess monies should be distributed to the creditor's, who should be advised that their original debts remain receivable.

Dated at Halifax, Nova Scotia this 7<sup>th</sup> day of January , 2002.

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Registrar in Bankruptcy