SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY
Citation*: Crocker (Re),* 2019 NSSC 121

Date: 20190409
Docket: No. 41652
Estate Number: 51-2104574
Registry: Halifax

IN THE MATTER OF: The bankruptcy of Jo-Anne Irene Crocker

Judge:	Raffi A. Balmanoukian, Registrar
Heard:	April 5, 2019, in Halifax, Nova Scotia
Counsel:	Kimberley A. Burke, for the Trustee, BDO Canada Limited Jo-Anne Irene Crocker, appearing personally

Balmanoukian, Registrar:

[1] Ms. Crocker filed for this, her first bankruptcy, on March 30, 2016. That was just over seven years after she completed her studies. Accordingly, her only major debt, approximately $25,000 in federal and provincial student loans, would be extinguished pursuant to Section 178(1)(g) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 upon her discharge.

[2] Predictably, and appropriately, she cited the student loans as the reason for her assignment.

[3] Ms. Crocker studied early childhood education, finishing in 2008. She works in that field, taking home approximately $1,000 biweekly (ie $26,000 per year); her husband takes home approximately $900 biweekly, for a total household take-home income of $4,133 per month or just under $50,000 per year. This is, roughly, consistent with the budgetary information during the insolvency period that is before me.

[4] Ms. Crocker's daughter, age 20, lives at home and is neither in the workforce nor in school. She does not contribute to household expenses.

[5] Ms. Crocker thus has surplus income within the meaning of Section 68 of the BIA and Superintendent's Directive 11R2. I need not decide, given my disposition of this case, whether it is appropriate to base this on a two or three person household. The superintendent's 2019 standard for a family of two is $2743 per month; for three, $3,372. Ms. Crocker makes just over half the family income. I do not wish to be taken as saying that these standards are the sole benchmark for determining what is appropriate in these circumstances.

[6] Ms. Crocker had not completed all of her BIA duties at the time of the original application for discharge in January, 2018. She has now done so, including payment of surplus income for the 2016-18 bankruptcy period, totalling $6,525.33.

[7] Ms. Crocker made use of student loan interest relief at various times between 2008 and 2016, with the result that the current balance on her student loan is approximately what it was when it entered "repayment." There were also various NSFs. Her evidence was that she "thinks" she made one payment.

[8] The question is now whether Ms. Crocker should receive an absolute discharge. No opposition has been filed.

[9] I have recently reviewed the "special nature" of student loans, and how they should be treated when they are dischargeable in bankruptcy and are the sole or sole significant creditor, in *Re Handspiker*, 2018 NSSC 333. I will not parrot those comments except to incorporate them by reference.

[10] Unlike the "all or nothing" remedy in 178(1.1) "hardship" applications, the applicable remedy section here – s. 172 – gives me a wide discretion to fashion a remedy that fits the facts and circumstances of the case. I strongly believe in bespoke dispositions when my jurisdiction so allows. A Court may be busy but it should never be of rote.

[11] To cut to the last page, I believe Ms. Crocker should make a more substantial contribution to her estate given the facts of this case. Student loans are her only significant debt, and the express purpose of her assignment. As with most such insolvencies, her assets do not amount to fifty cents on the dollar of unsecured liabilities, and the liability did not "arise from circumstances for which the bankrupt cannot justly be held responsible" (s. 173(1)(a)).

[12] I have taken into account the following factors:

- Ms. Crocker's household has surplus income, noticeably above the superintendent's standards, and apparently stably so

- She is working in her field of study

- The student loans are the sole meaningful debts

- She paid little or nothing towards the loan over the years through the scheduled payment process

- Her compliance with the bankruptcy obligations was delinquent, but not outrageously so

- This is a first bankruptcy, albeit very shortly after the student loans passed the seven year "threshold"

- She has now paid $6,525.33 into her estate as surplus income, in addition to minor other receipts

- Ms. Crocker is 51. There is no evidence that her, or her family's, income is on a major upward trajectory. She should not be expected to live under the Damoclean sword of repayment "forever," particularly as the need to prepare for her later years grows

- There are no other public debts (e.g. tax); Ms. Crocker does not appear to view the public purse as her own

- Some of her income and expense budgets (although, optimistically, not the later ones before me) contain $65 to $80 per month for smoking. They are otherwise not extravagant

[13] In light of the above, and in exercise of my discretion, I believe a further payment of $5,000 into the estate as a condition of Ms. Crocker's discharge is an appropriate balance of debtor rehabilitation, creditor protection, and system integrity. That will bring total receipts to just under half the value of the student loan and not overly prolong this first bankruptcy.

[14] I would have gone further had this been a second or subsequent bankruptcy; if the applicable income or prospects been higher; if Ms. Crocker's BIA delinquencies had been more egregious; or (at the risk of indelicacy) if Ms. Crocker was younger with more earning years ahead of her.

[15] I may not have gone so far had a greater portion of the debt been paid since 2008, particularly if it had been so paid "voluntarily" (that is, through regular scheduled payments and not garnishment or other collection process, or by way of interest relief); if the education undertaken was not in use through no fault of hers; or if the relevant income had been more modest.

[16] Of course, the estate receipts, which will now be around $12,000, are not what the student loan authorities will receive after taking into account the costs and fees of the bankruptcy process. I take some consolation that in addition to the dividend payable under the BIA, the balance of receipts not so paid will generate income and other taxes and will thus partially make their way back to the public who funded the student loan to begin with.

[17] That $5,000 will not bear interest and shall be payable to the estate at not less than $250 per month, beginning not later than 30 days from the date of this decision. It is prepayable at any time in whole or in part. It is worth stating the obvious that the sooner Ms. Crocker does so, the sooner she exits the bankruptcy process.

[18] I will issue an order under s. 68 of the BIA if requested.

[19] Upon payment of the foregoing, Ms. Crocker will receive an absolute order of discharge.

Balmanoukian, R.