SUPREME COURT OF NOVA SCOTIA
Citation: *BDO Canada v. Carrigan-Warner*, 2022 NSSC 16

Date: 20220113
Docket: Hfx. No. 503875
Registry: Halifax

Between:

BDO Canada Limited

Appellant

v.

Tammy Mary Rose Carrigan-Warner and
Dale Patrick Carrigan-Warner

Respondents

DECISION

Judge:	The Honourable Justice John Bodurtha
Heard:	June 23, 2021, in Halifax, Nova Scotia
Written Decision:	January 13, 2022
Counsel:	Tim Hill, Q.C., Counsel for BDO Canada Limited Tammy Mary Rose Carrigan-Warner, Self-Represented Dale Patrick Carrigan-Warner, Self-Represented

By the Court:

Overview

[1] This is an appeal made pursuant to s. 192(4) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 ("*BIA*"). BDO Canada Limited, the trustee, appeals from the decision of the Registrar in the estates of Tammy Mary Rose Carrigan-Warner and Dale Patrick Carrigan-Warner rendered January 26, 2021. In that decision, the Registrar disallowed a portion of the fees of the trustee on the basis that the Registrar did not accept the method employed by the trustee to calculate the equity to be recovered from the bankrupts' home.

[2] In the Registrar's view, by ignoring the Court's matrix, the trustee did not exercise due diligence in calculating notional equity. The trustee failed to pay "fair attention" to the interests of creditors and the problem was compounded when the trustee declined to recalculate the bankrupts' obligations after the home sold for approximately $15,000 more than the original appraisal.

[3] The evidence also established that, after the property was sold for approximately $15,000 more than the original valuation, the trustee intended to give the bankrupts, not the creditors, the benefit of the surplus equity. Based on that evidence, the Registrar concluded that the trustee failed to protect the interests of creditors through the exercise of due diligence in calculating the bankrupts' obligations. I am not convinced that the Registrar erred in making this determination.

Background

[4] On February 20, 2019, Tammy Mary Rose Carrigan-Warner and Dale Patrick Carrigan-Warner filed assignments in bankruptcy with BDO Canada Limited appointed as trustee. It was a first bankruptcy for both individuals. Several weeks earlier, on February 4, 2019, each of the bankrupts entered into an agreement entitled "Debtor Agreement for Service Income Payments and/or Voluntary Payments and/or Purchase of Estate Assets (Option)". In those agreements, the trustee agreed that the bankrupts could repurchase the family home, appraised at $240,000, upon payment by each of $9,470 (half the equity in the home) plus a $75 voluntary contribution ($9,545). These monies were to be paid beginning on March 15, 2019, and ending on February 15, 2025, at the rate of $150 per month.

[5] Although the trustee initially opposed the discharge of each of the bankrupts on the basis that their assets were not of a value equal to 50 cents on the dollar on the amount of their secured liabilities, and that they failed to perform their duties imposed under the *BIA*, the bankrupts remedied these defaults by the time of the discharge application.

[6] On July 8, 2020, Leonard Shaw, Senior Vice-President of BDO Canada Limited, swore and filed an affidavit in support of an application for order of discharge of each of the bankrupts. In the affidavit, Mr. Shaw deposed that the bankrupts had completed their financial counselling sessions and that both had provided all the income information necessary to determine that there were no surplus income obligations. He also deposed that the family home had been sold, and the net proceeds (after paying off the mortgage and closing costs) were $50,344.58. In his affidavit, Mr. Shaw said, "It is the Trustee's position that equity due to be paid by the Bankrupt would be based on the appraisal and mortgage balance as of the date of bankruptcy." In other words, the trustee's position was that the bankrupts should still each pay $9,470 + $75, notwithstanding that the home had sold for approximately $15,000 more than the trustee's original valuation.

[7] At the hearing, Registrar Balmanoukian rejected the trustee's position and ordered that the entire amount of the surplus be paid into the estates of the bankrupts. The orders, issued on September 14, 2020, also required the trustee's accounts in both estates to be taxed by the Registrar. The bankrupts did not appeal the Registrar's decision.

[8] On January 6, 2021, the trustee filed its statements of receipts and disbursements, and sought to have the fees taxed in accordance with Rule 128 of the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368. The Registrar declined to give the trustee the benefit of the additional equity ordered to be paid into the estates of the bankrupts in calculating the trustee's fees, calculating fees instead based on the equity figure proposed by the trustee at the discharge hearing. The trustee appealed the Registrar's decision to write down its fees. The Respondents were served with notice of the hearing but failed to appear.

Relevant Legislative Provisions

[9] The *BIA* provides:

Statement of receipts and disbursements

152(1) The trustee's final statement of receipts and disbursements shall contain

(a) a complete account of

(i) all moneys received by the trustee out of the bankrupt's property or otherwise,

(ii) the amount of interest received by the trustee,

(iii) all moneys disbursed and expenses incurred by the trustee,

(iv) all moneys disbursed by the trustee for services provided by persons related to the trustee, and

(v) the remuneration claimed by the trustee; and

(b) full particulars of, and a description and value of, all the bankrupt's property that has not been sold or realized together with the reason why it has not been sold or realized and the disposition made of that property.

…

Fees and disbursements of trustee

156 The trustee shall receive such fees and disbursements as may be prescribed.

…

Powers of registrar

192 (1) The registrars of the courts have power and jurisdiction, without limiting the powers otherwise conferred by this Act or the General Rules,

…

(i) to tax or fix costs and to pass accounts;

…

Appeal from registrar

(4) A person dissatisfied with an order or decision of a registrar may appeal therefrom to a judge.

Order of registrar

(5) An order made or act done by a registrar in the exercise of his powers and jurisdiction shall be deemed the order or act of the court.

…

[10] The *Bankruptcy and Insolvency General Rules* provide:

Appeals from Decisions of the Registrar

30 (1) An appeal from an order or decision of the registrar must be made by motion to a judge.

(2) A notice of motion or a motion, as the case may be, must be filed at the office of the registrar and served on the other party within 10 days after the day of the order or decision appealed from, or within such further time as the judge stipulates.

(3) The notice of motion or the motion must set out the grounds of the appeal.

…

Code of Ethics for Trustees

34 Every trustee shall maintain the high standards of ethics that are central to the maintenance of public trust and confidence in the administration of the Act.

35 For the purposes of sections 39 to 52, "professional engagement" means any bankruptcy or insolvency matter in respect of which a trustee is appointed or designated to act in that capacity pursuant to the Act.

36 Trustees shall perform their duties in a timely manner and carry out their functions with competence, honesty, integrity and due care.

…

Remuneration of Trustees

58 (1) Unless the court orders otherwise, the remuneration of a trustee is deemed to take into account all services performed by the trustee and by the trustee's partners and employees.

(2) In taxing the accounts of a trustee pursuant to section 152 of the Act, the taxing officer shall tax disbursements at the rates provided by the tariff.

(3) A trustee's disbursements do not include the indirect costs of the trustee's facilities or premises.

(4) The expenses incurred by a trustee for the services of an interpreter referred to in section 57 and subsection 108(2) are calculated, at the time of taxation, at a rate that the taxing officer deems reasonable.

(5) The taxing officer shall determine the disbursements for which the trustee is entitled to be repaid in accordance with this section.

…

Trustee's Fees and Disbursements in Summary Administration

128 (1) The fees of the trustee for services performed in a summary administration are calculated on the total receipts remaining after deducting necessary disbursements relating directly to the realization of the property of the bankrupt, and the payments to secured creditors, according to the following percentages:

(a) 100 per cent on the first $975 or less of receipts;

(b) 35 per cent on the portion of the receipts exceeding $975 but not exceeding $2,000; and

(c) 50 per cent on the portion of the receipts exceeding $2,000.

(2) A trustee in a summary administration may claim, in addition to the amount set out in subsection (1),

(a) the costs of counselling referred to in subsection 131(2);

(b) the fee for filing an assignment referred to in paragraph 132(a);

(c) the fee payable to the registrar under paragraph 1(a) of Part II of the schedule;

(d) the amount of applicable federal and provincial taxes for goods and services; and

(e) a lump sum of $100 in respect of administrative disbursements.

(3) A trustee in a summary administration may withdraw from the bank account used in administering the estate of the bankrupt, as an advance on the amount set out in subsection (1),

(a) $250, at the time of the mailing of the notice of bankruptcy;

(b) an additional $250, thirty days after the date of the bankruptcy; and

(c) an additional $250, four months after the date of the bankruptcy.

(4) Subsections (1) to (3) apply to bankruptcies in respect of which proceedings are commenced on or after September 30, 1997 and the accounts are taxed on or after April 30, 1998.

The Equity Calculation and the Registrar's Decision

[11] At the start of the bankruptcy process, the trustee valued the bankrupts' home at $240,000, based on a third-party appraisal. The trustee then deducted the mortgage amount and what it estimated to be the notional costs of disposition (since the home would not actually be sold) and arrived at an equity figure of $18,940. Each of the bankrupts agreed to pay $9,545 to repurchase half of the equity in the home. Ultimately, however, the home was sold for a net purchase price of $254,574.42. After deductions for legal fees, commissions, mortgage payout and other disposition costs ($204,338.39), the proceeds available to the vendors on closing were $50,344.58. Those funds were held in trust pending the hearing of the applications for an order of discharge.

[12] At the hearing of the applications, the trustee took the position that, notwithstanding the sale of the home for $14,574.42 more than the trustee's original $240,000 valuation, the equity due to be paid by each of the bankrupts would be based on the appraisal and mortgage balance as of the date of bankruptcy. In other words, the bankrupts would still only have to pay $9,470 + $75 each to the trustee for the benefit of their estates. Although the Court was not provided with a transcript of the hearing of the discharge applications, the terms of the orders setting terms for discharge indicate that the Registrar disagreed with the trustee's position and ordered that the total net proceeds from the sale of the home ($50,344.58) were to be paid to the trustee for the benefit of the bankrupts' estates. The orders also required the trustee's accounts in both estates to be taxed by the Registrar.

[13] During the taxation hearing, the Registrar stated:

> I directed that these matters be brought before me for taxation. The concern that I had and have is that this was valued, firstly, on a basis that the court would not accept – not have accepted, even on a notional basis – you had a value on the Statement of Affairs of two hundred and forty thousand dollars ($240,000). The actual sale price was two fifty-five. And I'll return to that.
>
> But on the Statement of Affairs, you had a value of two forty, and a security valued at two hundred and two thousand. Running it through my normal matrix of five percent commission, legal fees, three months penalty, that would have yielded net equity on a notional basis of twenty-one thousand six hundred and eighty-five dollars ($21,685) for each bankrupt share of ten eight forty-two fifty [$10,842.50]. You had a valuation of nine thousand four hundred and seventy dollars ($9,470) per person.
>
> In addition, as you are aware, there was an intervening sale for two hundred and fifty-five thousand dollars ($255,000). I have the receipts and disbursements, which the trustee also did at the time of hearing.
>
> And, Mr. Shaw, I refer you to your affidavit of July 8th, in which you stated at paragraph 6, and I quote:
>
> > 'That it is the Trustee's position that equity due to be paid by the bankrupt will be based on the appraisal and mortgage balance as of the date of bankruptcy.'
>
> I pointed out that not only was that unacceptable, but also incorrect. So I directed that the matter be brought forward before me for taxation. And you've calculated

the receipts and disbursements based on a summary administration based on actual receipts[1].

[14] The Registrar gave Mr. Shaw an opportunity to make submissions. The following exchange occurred:

> **MR. SHAW:** The additional equity for the home was captured in the bankruptcy estates. So, that additional equity was received in each file.
>
> **THE REGISTRAR:** And you did nothing to get it.[2]
>
> **MR. SHAW:** Well, no, not correct. We…
>
> **THE REGISTRAR:** Mr. Shaw, you would have been perfectly happy with nine thousand four hundred and seventy dollars ($9,470) out of that going to each estate, correct?
>
> **MR. SHAW:** That's our – yes.
>
> **THE REGISTRAR:** Even after sale?
>
> **MR. SHAW:** That's how we calculated the equity and that's what we determined. We've had cases before where we've applied to the Court to try to get the increase in value after the date of bankruptcy, only to be told that any increase after we've determined their value, was not for the trustee. We had a case before Justice McDougall ---
>
> **THE REGISTRAR:** But that's where you're wrong. What Justice McDougall determined was after there is a conditional, suspended or absolute order in place, the ride up or ride down is for the account of the bankrupt.
>
> In this instance, there was no order. …
>
> **MR. SHAW:** Okay, So, when the house became ---
>
> **THE REGISTRAR:** So, my point to you is when you came in here last time, the house was sold, there was fifty odd thousand bucks in there, and you would have been happy with nine thousand four hundred and seventy dollars ($9,470) a head. Am I wrong?
>
> **MR. SHAW:** No, you're not wrong. That's how ---
>
> **THE REGISTRAR:** That's how you're getting your costs taxed.[3]

The Registrar went on to explain that, in his view, the trustee had not paid "fair attention" to creditors, and that it had not "calculated equity, either on a notional

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[1] Appeal Book, Tab 6, pp. 90-91

[2] Having listened to the hearing, I can confirm that the transcription company misheard this statement as "And they did nothing to get it", and incorrectly attributed it to Mr. Shaw, when it was in fact made by the Registrar. The next line was then incorrectly attributed to "Unidentified speaker", when it was in fact a statement by Mr. Shaw.

[3] Appeal Book, Tab 6, pp. 91-93

and/or actual basis, accurately or fairly." He then told Mr. Shaw, "I am going to tax your accounts based upon the calculation that you made." The Registrar continued:

> **THE REGISTRAR:** My takeaway to you is two-fold. First, when running equity, I direct you to due diligence, because it could have these consequences. And secondly, when there is an actual disposition, don't come to me with notional figures. So I'll ask you to recalculate those and resubmit them for the Court.[4]

After the Registrar provided the final total for the fees for each estate, the following exchange occurred:

> **MR. SHAW:** My final comment on that though is that the trustee has an obligation to determine the equity on the onset of a file. And we did that. We valued the... [5]
>
> **THE REGISTRAR:** Improvidently.
>
> **MR. SHAW:** We valued the property ---
>
> **THE REGISTRAR:** Improvidently.
>
> **MR. SHAW:** Meaning?
>
> **THE REGISTRAR:** Meaning you didn't follow my matrix either on a notional basis – when there was an actual sale, you stuck to that number.
>
> **MR. SHAW:** But it was, at that time it wasn't – at that time it wasn't – they weren't – it wasn't decided at that time that they were going to sell it.
>
> **THE REGISTRAR:** It was sold by the time it got to my court.
>
> **MR. SHAW:** Correct. But at the time they filed it wasn't decided ---
>
> **THE REGISTRAR:** At the time they filed, your equity calculation was off what a court would have approved[6]-- if they still owned that today, and you came in here today seeking their discharge, you wouldn't be getting nine thousand four hundred and seventy dollars ($9,470). That's my point. You'd be getting ten and change.
>
> **MR. SHAW:** Because of the difference for the rate of the real estate?
>
> **THE REGISTAR:** The – I don't know how you got to ninety-four seventy. But if I take the appraised value, the matrix that this Court's used for over two years, and ran it – the mortgage per the Statement of Affairs, which was two hundred

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[4] Appeal Book, Tab 6, p. 97

[5] Again, the transcription company got this wrong, writing, "My final comment on that, is that the trustee has an obligation to return the equity on the onset of a trial. And we did that." That obviously is a mistake.

[6] Another error by the transcription company, which wrote this part as, "At the time they filed, your equity calculation was off, but the Court would have approved".

> and two thousand – I'll be getting ten eight forty-two fifty per head. Now that's based upon the mortgage balance per the Statement of Affairs. The actual payout, including penalty, was just under ninety-one.
>
> Now, that was a year and a half later. I don't know what – how much principal they paid down. Apparently some. I doubt if it was twelve thousand dollars ($12,000).[7] So, I would have been asking what the actual mortgage balance was. Run through that matrix. But the minimum you would have would have been twenty-six versus ninety-four seventy.
>
> **MR. SHAW:** But that was ninety-four per person, per file.
>
> **THE REGISTRAR:** Yeah. Twenty-one six eighty-five [$21,685] divided by two, ten eight forty-two fifty per head [$10,842.50].
>
> **MR. SHAW:** Which – but that's only nominally off of what we had calculated at ---[8]
>
> **…**
>
> **THE REGISTRAR:** No, sir. I'm saying the number I would have given you is 14.5 percent higher than what the number you gave me.
>
> **MR. SHAW:** Okay. Yes. Yeah, it's 14 percent but on the property value that's --[9]
>
> [*Emphasis added*]

[15] Mr. Shaw went on to explain that all real estate agents in Sydney charge a standard 6% commission, so his firm calculates notional disposition costs on that basis. The Registrar responded that there are other ways of selling real property than through a real estate agent, and, for that reason, notional amounts are calculated using "a weighted, blended, fair, and equitable balancing of those interests". Mr. Shaw countered, stating that any trustee selling a property is going to engage a professional real estate agent. The Registrar responded that, in a notional disposition, the trustee is not selling the property at all. The following exchange then occurred:

> **MR. SHAW:** We do our equity calculations based on what the market dictates.
>
> **THE REGISTRAR:** Mr. Shaw, you will do your output of equity calculations as the Court approves.[10]

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[7] In the Statement of Affairs, the trustee listed the mortgage amount as $202,000. But in the Statement of Adjustments dated July 3, 2020, the trustee listed the mortgage amount as $190,822.13.

[8] Appeal Book, Tab 6, pp. 98-100

[9] Appeal Book, Tab 6, p. 102

[10] Appeal Book, Tab 6, p. 104

…

MR. SHAW: We're going to have to discuss with our firm then, on how to change our policy or our ---

THE REGISTRAR: Well, you better because that policy hasn't been exactly new. I mean I'm not making this up as I go along. It's been out there for quite some time, including files that you've had before me, Mr. Shaw.

MR. SHAW: Correct, and that is correct, but again, we ---

THE REGISTRAR: So, you can discuss it in your firm until the cows come home. This isn't something that I'm blindsiding you with.

MR. SHAW: But, again, I'm just, you know, I'm just ---

THE REGISTRAR: And now that it's coming out of your pocket, you've got something to say about it.

MR. SHAW: I'm fine with -- like, I accept -- I'm fine with the reduction in fee. That's immaterial. That's -- I accept that. It's more the accusation or the insinuation that we didn't do our due diligence and didn't do our job.

THE REGISTRAR: It's not an accusation. It's a flat-out statement.

MR. SHAW: Well, exactly, but then I understand ---

THE REGISTRAR: Mr. Shaw, at this stage of having to deal with this Court, on your admission, we've – this is a consistent calculation that's been used since day one. If you're still using an in-house matrix, which I've had a comment to make earlier this morning on, if you're still using it, you know, then, no, you haven't done due diligence. Because you know the methodology that this Court is going to employ.

If I was doing this out of the blue for the first time today and you say, "Well, I've done it this way for so many years. And now, where is all this coming from", you might have a point.[11]

[*Emphasis added*]

The Argument on Appeal

[16] The trustee was represented by Tim Hill, Q.C. on the appeal. The essence of the Appellant's argument was that the Registrar erred in principle when he reduced the trustee's fees on the basis that he did not agree with the methodology the trustee used to calculate the equity owed by the bankrupts. According to Mr. Hill, the trustee's methodology was commercially reasonable, and the Court should have deferred to the trustee's decision to require the bankrupts to pay the equity amount calculated on a notional basis and agreed to in the Debtor Agreement for

[11] Appeal Book, Tab 6, pp. 105-106

Service Income Payments and/or Voluntary Payments and/or Purchase of Estate Assets (Option), notwithstanding the subsequent sale of the property for approximately $15,000 more than the appraised value. Indeed, Mr. Hill suggested that the agreement entered into between the trustee and the bankrupts was binding on the Court (although he went on to say that that issue was not actually before the Court in this appeal).

[17] Mr. Hill argued that there is no law on how a trustee should value property and calculate equity where the bankrupt intends to buy back the asset. He stated to the Court:

> In terms of valuation of these properties, there is no rule, no regulation, no guideline, other than perhaps may appear in some other decision of the Registrar which I'm not aware of. But there are no guidelines as to how a trustee deals with the valuation of property.
>
> [*Emphasis added*]

[18] Mr. Hill acknowledged that a trustee who fails in his duties under the *BIA* may not be entitled to full compensation but argued that, in this case, the Registrar erred in writing down the trustee's fees because there was no evidence before him that the trustee had breached any of its duties. Mr. Hill's position was that "the trustee essentially was punished because he used a methodology that the Registrar disagreed with."

The Standard of Review

[19] The standard of review is not in dispute. Mr. Hill acknowledged that the Court will not intervene on an appeal from a taxation decision by the Registrar unless the appellant demonstrates that the Registrar erred in principle or in law (or failed to consider a proper factor or considered an improper factor), which led to a wrong conclusion: *G.W. Holmes Trucking (1990) Ltd. (Re)*, 2005 NSSC 290, at paras. 11-15; *Durdle (Re)*, 2020 NSSC 67, at paras. 7-14; *Murphy v. Sally Creek Environs Corporation*, 2010 ONCA 312, at paras. 67-71.

Law and Analysis

[20] The Appellant relied primarily on two decisions. *Asian Concepts Franchising Corporation (Re)*, 2017 BCSC 1452, was cited as authority for the proposition that "deference should be given to a trustee's decision on the methodology when conducting a valuation." In *Re Asian Concepts*, there were two

applications before the Registrar – one from a creditor, Adrenaline Drive Inc., and one from the debtor, Asian Concepts Franchising, each appealing from the Trustee's Notice of Valuation of Adrenaline's claim pursuant to s. 135(4) of the *BIA*. Adrenaline argued the claim was undervalued, while Asian Concepts said it was too high.

[21] Asian Concepts filed a Notion of Intention to Make a Proposal pursuant to Division 1 of Part III of the *BIA*. Adrenaline filed its proof of claim with the trustee in the amount of $8,166,774.82. The trustee disallowed the claim but for $65,720.25. That valuation was appealed, but was adjourned by the Registrar's order of October 7, 2014, to allow the trustee to further evaluate the quantum of Adrenaline's claim based on a more expansive definition of what should have constituted the record before the trustee. At a provisional vote taken on the proposal in March 2014, claims totalling $3,090,011.40 were voted in favour of the proposal. Adrenaline voted against the proposal.

[22] On December 16, 2014, the Registrar granted leave to the trustee to value the Adrenaline claim for voting purposes only, without determining liability. The trustee valued the Adrenaline claim at $754,720.25 ($65,720.25 liquidated, $689,000 unliquidated). Proposals must be approved by 50% of creditors having two-thirds of the debt, which meant that Adrenaline's claims could not affect the outcome of the vote on the proposal unless they were valued significantly higher, or the other creditors' claims were valued lower, or a combination of the two.

[23] Section 135 of the *BIA* provides, in part:

Admission and Disallowance of Proofs of Claim and Proofs of Security

> **Trustee shall examine proof**
>
> 135 (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.
>
> **Determination of provable claims**
>
> (1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.
>
> …
>
> **Determination or disallowance final and conclusive**

> (4) A determination under subsection (1.1) or a disallowance referred to in subsection (2) is final and conclusive unless, within a thirty day period after the service of the notice referred to in subsection (3) or such further time as the court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the General Rules.
>
> …

[24] The Registrar, relying on *Galaxy Sports Inc., Re*, 2004 BCCA 284, confirmed that the standard of review on an appeal of a trustee's decision under s. 135(4) is reasonableness: see paras. 39-40 and 43.

[25] In *Asian Concepts*, the trustee's position was that its approach in valuing the unliquidated claim was reasonable, and that the valuation should stand, despite the trustee's admission that it made several errors in the calculation. The Registrar held that the methodology for valuation was reasonable, but the calculation errors could not be ignored. The Registrar corrected the errors, resulting in an increase of $368,000 to the valuation of the unliquidated claim.

[26] Mr. Hill also cited *Re Firestone*, 2003 ABQB 417, as support for the Appellant's position that the trustee acted reasonably in proceeding on the valuation at the date of bankruptcy and the agreement reached with the bankrupts. In *Re Firestone*, the bankrupt was the registered owner of a quarter section of land, and he claimed a $40,000 exemption in relation to the land under s. 67(1) of the *BIA*, s. 88(g) of the *Civil Enforcement Act*, R.S.A. 2000, c. C-5, and s. 37(1)(e) of the *Regulations*. Since the bankrupt's equity was less than $40,000.00 at the time, the trustee executed and delivered a "Disclaimer of Interest" to the Alberta Treasury Branch who held a mortgage against the land. The bankrupt took no steps to have the disclaimer registered against the land pursuant to s. 20 of the *BIA*. A few days before the bankrupt was entitled to an automatic discharge, he died, and his life insurance paid out the balance of the mortgage. The bankrupt's trustee then took the position that there was substantial non-exempt equity in the land as a result of the mortgage payout.

[27] Registrar Waller held that the trustee was bound by the disclaimer:

> 19 I am of the view that a disclaimer once given cannot be revoked or varied and the trustee must be bound by that decision. I would carve out from that conclusion situations where there has been some misrepresentation by the bankrupt or where the trustee has acted on facts that subsequently proved to be incorrect. Here there are no such exceptions. The trustee had the benefit of a formal appraisal of the

> land and was aware that the mortgage was life insured. He was not obliged to provide the bankrupt with a disclaimer but chose to do so. The bankrupt relying on that disclaimer, continued to make mortgage payments, pay his life insurance premiums and generally treat the property as his own.
>
> 20 Had the bankrupt not had the benefit of the disclaimer, he may well have made other choices as to how he would deal with the property registered in his name. The effect of the bankruptcy was to vest all of the bankrupt's property both exempt and non-exempt in the trustee. In *re Gordon* (2000) 25 C.B.R. (4th) 37, Registrar Funduk stated:
>
> > Even though exempt property vests in the trustee, the trustee is not required to take possession of it. The trustee may decide that it is best in the circumstances to leave the property in the possession of the bankrupt, rather than taking possession until the bankrupt is discharged and then returning it to the bankrupt.
>
> 21 <u>This trustee purposefully chose to return the exempt residence back to the bankrupt by disclaimer prior to his discharge and he must be bound by that decision.</u> The fact that he did so without the benefit of approval by the court as prescribed by section 20 of the *Bankruptcy and Insolvency Act* is unfortunate, but it in no way affects the finality of his decision.
>
> [*Emphasis added*]

[28] I am not persuaded by either of the Appellant's authorities. *Asian Concepts* dealt with a trustee's valuation of an unliquidated claim which, by its nature, is incapable of precise calculation. It would be impossible for a Registrar or a superior court to set out a specific methodology or "matrix" that trustees should apply when valuing an unliquidated claim. As Registrar Balmanoukian noted, there is no one correct answer when valuing an unliquidated claim. Notional equity in real property, on the other hand, is capable of relatively consistent calculation through the application of the Court's matrix, which has been explained in several decisions. Bankrupts should be entitled to expect that their obligations will be calculated consistently from one trustee to the next. So, too, should creditors be entitled to expect that their interests will be protected to the same degree regardless of the firm appointed as trustee.

[29] The *Re Firestone* decision is also distinguishable. The trustee in that case provided the bankrupt with a disclaimer of the trustee's interest, and the bankrupt relied on that disclaimer in making decisions about his property. In other words, the trustee was estopped from claiming the additional equity. In the case of the Carrigan-Warners, however, there was no disclaimer of interest. There was merely an agreement between the trustee and the Carrigan-Warners that the latter would

each pay $9,470 + $75 to buy back the equity in the home. That figure was calculated by subtracting notional disposition costs from an appraised value of $240,000. Once the Carrigan-Warners chose to sell the home, the agreement no longer applied. The "value" of the home would be dictated by the market, and the disposition costs and the amount of equity remaining would be actual, not notional.

[30] During his submissions, Mr. Hill told the Court that trustees have no guidance on how to value property and calculate equity, "other than perhaps may appear in some other decision of the Registrar which I'm not aware of". Mr. Hill's own client, however, confirmed during the bankruptcy hearing that he was familiar with the Court's matrix for calculating notional equity, and that it was nothing new to him.

[31] Mr. Hill was also familiar with the Court's matrix, having been counsel in two matters where the Registrar has clearly set out the Court's approach to the calculation of notional equity. In *McInnis (Re)*, 2020 NSSC 64, Mr. Hill appeared before Registrar Balmanoukian on behalf of the trustee. In that case, the bankrupts made Assignments in Bankruptcy on May 17, 2018. They owned property in Lunenburg County. In preparation for their filings, they obtained a "very brief valuation opinion" from a local real estate agent based on a "90 day quick sale". In that Opinion of Value, dated March 21, 2018, the real estate agent valued the property at $115,000. The bankrupts disagreed with that valuation, believing the value to be lower. The Registrar noted that at that value, and taking into account notional disposition costs, there was approximately $7,700 equity in the property. However, the trustee took no steps to record the assignments in the relevant judgment roll or parcel registers.

[32] In the summer of 2019, the bankrupts decided they could no longer afford the home and listed it for sale at $185,000. There was no indication that the trustee was aware of the listing. The bankrupts quickly received a full-price offer and the deal closed on October 15, 2019. At some point, the trustee became aware of the pending sale but still did not register the assignments until October 21, 2019. The net proceeds from the sale ($67,984.37) were being held in trust at the time of the application for discharge. The bankrupts' proven claims exceeded the amount of the proceeds. The trustee claimed that, as the property vested in the trustee and it had not disclaimed its interest, the net proceeds belonged to the estate to be distributed according to the scheme set out in the *BIA*. The bankrupts said they never would have sold the property had they known that the trustee might be entitled to all of the proceeds. They argued that the trustee, having proceeded

based on a $115,000 valuation, was stuck with that figure. In other words, they said the trustee was only entitled to the approximately $7,700 equity originally estimated.

[33] The Registrar, at para. 19, noted that the fact situation raised five issues, including two issues which are relevant in the matter before me:

> 1. Which value should be used, and is the Trustee estopped *on these facts* from asserting a value other than $115,000?
>
> 2. How should one calculate notional or actual disposition costs?
>
> …

[34] On the first issue, the Registrar reviewed the case law establishing that the "last" date for the valuation of assets is the date of the discharge hearing, including *Re Ross,* 2020 NSSC 36 and *Re Wadden*, 2018 NSSC 217. Once there is a discharge order in place -- whether it be absolute, suspended or conditional -- any increase in the value of the home is for the account of the bankrupt. The trustee is not permitted to revisit the valuation and claim the benefit of the subsequent growth.

[35] The Registrar also discussed the decision in *Re Johnson*, 2006 NSSC 384. In that case, the trustee made explicit and repeated assertions that it would take no steps to realize on the equity in a bankrupt's property. Based on that, the bankrupt continued to service the property's obligations and increased its equity. Registrar Cregan decided that the trustee was estopped from changing its mind and recalculating the asset's net value. The Registrar said the following about *Johnson*:

> [30] I continue to doubt *Johnson*, at least absent evidence of active representations or misrepresentations by the Trustee that are relied upon by the Bankrupt to her or his detriment. Respectfully, this considers only half of the equation – that of the debtor. It does not consider the rights of creditors.
>
> However, I do not need to decide today whether Johnson is incorrect. It is distinguishable from the facts at bar.
>
> [*Emphasis added*]

[36] The Registrar held that, on the facts, the trustee was not bound by the initial valuation:

> [31] Here, there is no evidence that the Trustee, by act or omission, led the McInnises astray. It is true that it calculated equity based on a $115,000 valuation, but that valuation was obtained by the McInnises prior to their assignment; then, they disputed it as being too high. They do not appear to have consulted with the Trustee prior to listing the property for sale, or agreeing to sell it (despite, in law if not on Land Registration records, it not being theirs to sell). There is no indication that the Trustee would not seek to realize on the net equity, whatever that may be. Indeed, all indications are to the contrary. It simply turned out to be woefully underestimated.
>
> [32] While an actual arm's length sale will always be the best indicator of value as opposed to an opinion (even an expert opinion) of value, it will also be recalled here that we have two different benchmarks – a very abbreviated "quick sale" opinion, and a market-driven listing and sale (which also turned out in fact to be a full-value sale and a quick sale at that). There is no indication the Trustee did anything to influence either of these figures, and no indication that there was the kind of active assertions at play in *Johnson*. Nor are there the type of intervening events and third-party proceeds that were at issue in *Ross*, *Wadden*, or *MacRury*. It was the same real property throughout – the only difference (aside from the UV light) is that the McInnises thought it was worth less than it really was. That thought process was of their own genesis.
>
> [33] I therefore conclude that the proper valuation is $185,000 before disposition costs, and that the Trustee is not estopped from so maintaining.
>
> [*Emphasis added*]

[37] As to the second issue – the calculation of notional or actual disposition costs – the Registrar wrote:

> [34] In this case, there are actual costs of disposition known to the Court. I believe, however, that it is appropriate to set out some guidance **as I have done in open Court on several occasions**, on what are appropriate and normal disposition costs in calculating notional or actual equity in residential real property, for bankruptcy purposes.
>
> [35] This Court has been told on other occasions that it should effectively take the calculations by the Trustee at face value, and defer to them. I disagree. While Trustees have undoubted expertise, their practices and assumptions vary widely. It is only just to all participants in the process that the Court apply a principled set of standards, consistently.
>
> [36] I am often asked to grant conditional orders based on the repurchase of a non-exempt asset, such as equity in real property. Unlike some jurisdictions, Nova Scotia does not have a "homesteader's exemption" which protects a given level of net equity. However, in calculating equity when there is no actual disposition, it is appropriate to put the estate in the position it would be in had the

asset been surrendered to the Trustee, and the Trustee disposed of it in the ordinary course.

[37] I start with gross value. This case illustrates in stark relief the danger of using liquidation or forced-sale values. Certainly if a Trustee actually disposes of an asset, it would be known to be a non-market sale and on an "as is, where is" basis, with the associated impact on the transaction price. However, in a notional disposition, it is appropriate in most instances to attempt to value the asset on a fair market basis.

[38] From this, I generally allow the following deductions:

- Mortgage balance as of the date of assignment, including any penalty in evidence (or, failing such evidence, three months' interest at then-prevailing rates, again if the rate on the actual loan is not before me).
- Outstanding real property taxes.
- Real Estate commission at 5% plus HST, with a floor of $1500 plus HST (I note that the commission to the McInnises is a somewhat unusual 6.16%, which was unable to be explained to me). I appreciate that some transactions may attract a higher commission; others may be private sales. I believe on a notional calculation, this strikes a fair balance to all.
- Cost of conversion (commonly called "migration") to the Land Registration system, if not already done, at $1500. If there is more than one lot, how much extra would generally depend on whether there appears to be a wholly or partially common chain of title. Two simultaneous migrations are more work than one, but usually not twice as much.
- Legal fees of $1000 all-inclusive. This exceeds the norm in many parts of the Province, but I bear in mind that a Trustee would generally be involved whose participation (by disclaimer or deed) would generally be required.
- Costs necessary to effect the sale, such as minor repairs or improvements that arise from a property inspection. Here, the McInnises installed a UV light at a cost of some $400, and it was properly conceded that this amount should be reimbursed to them.
- I generally will not allow carrying costs on a notional disposition calculation, as the bankrupt has use and benefit of the asset, and by definition is seeking to keep it.

[*Emphasis added*]

[38] Registrar Balmanoukian explained exactly how notional disposition costs should be calculated in a case where Mr. Hill was counsel for the trustee.

[39] Registrar Balmanoukian provided further guidance in *Gavel (Re)*, 2021 NSSC 5, released on January 11, 2021, where, again, Mr. Hill was counsel for one of the parties.[12] There were various other steps and delays before the matter made it to court in January 2021. The Registrar set out nine issues raised by the application for discharge, including the following, at para. 12:

> 1. What is the proper date for valuing the equity in the bankrupt's former interest in the real property?
> 2. Is the Trustee estopped from asserting a different value from that communicated to the bankrupt?
> 3. Is the Court bound by that calculation?
> 4. If not, and without consideration of the insurance issue, what is that equity?
>
> …

[40] On the first issue, the Registrar concluded that the proper date for valuation of the bankrupt's former interest in the real property was the discharge date (see para. 14). The Court found there was no reason not to value the equity at the time of the discharge hearing, at para. 19:

> [19] In this case, Mr. Gavel did not have a discharge hearing until now. He remains undischarged. The Trustee's objection was filed during his lifetime, setting out two separate calculations of equity. As noted above, there is no indication Mr. Gavel (or anyone on his behalf) acted on it or indeed even responded to it *inter vivos*. Neither he nor anyone on his behalf appears to have taken any active steps to have the discharge heard on its merits during his lifetime. As noted above, the proceeds of the benefit by friends eventually went at least in part to pay Ms. Gavel's (calculated) equity; not that of Mr. Gavel. While I will discuss issue estoppel below, it is adequate for current purposes to say that there is no evidence of any reliance or steps taken by Mr. Gavel to "solidify" his obligations to his bankruptcy estate, or to have his affairs arranged and in order for the time of his passing. <u>There is no juridical reason not to value his equity as at the time of this discharge hearing.</u>
>
> [*Emphasis added*]

[12]Note that the taxation decision in the Carrigan-Warner matter was made on January 26, 2021, and the notice of appeal was filed on February 4, 2021.

[41] On the second issue – whether the trustee was estopped from asserting a different value – the Registrar wrote:

> [24] The largest issue here, in dollar terms, is not how the Trustee valued the equity in the property but whether the Trustee is now estopped from claiming that the equity is different by reason of the insurance proceeds. While these two considerations yield significantly different equity figures, I believe it is important to keep them analytically distinct.
>
> [25] Ultimately, I conclude that the Trustee is not estopped on these facts, at any time prior to the issuance of a conditional or absolute order, from re-visiting the equity calculation as it pertains to Mr. Gavel (I have already discussed Ms. Gavel).
>
> [26] Given my conclusions respecting insurance, I do not need to consider whether the Trustee will always be estopped from "adding" post-bankruptcy, pre-discharge insurance proceeds. I reach a different conclusion, however, with respect to the Trustee's "pro-forma" equity calculations in this case (that is, the value of the property less encumbrances and costs of disposition).
>
> [27] I recently had occasion to consider this issue in *Re McInnis*, 2020 NSSC 64, a case in which Mr. Hill appeared for the successful Trustee. In that case, the Trustee had calculated equity based on a market value opinion, less reasonable notional disposition costs. It turned out that the property sold, prior to the bankrupt's discharge hearing, for considerably more. The issue was whether the McInnis' obligations were based on the actual sale price (ie actual market value) or the considerably lower notional calculation posited by the Trustee.
>
> [28] I had no difficulty concluding the former. First, as noted, there was no conditional or absolute order in place, so the issue of "date of valuation" was not a *fait accompli*.
>
> [29] Second, if anything the facts in the *McInnis* case cut substantially more in favour of the McInnises than the facts at bar cut in favour of Mr. Gavel. The Trustee had not registered its claim on title; the McInnises said (sensibly) that they would not have sold but for the mistaken belief that they would only have to pay the Trustee's calculated amount into the estate (although they do not appear to have consulted with the Trustee on the decision to sell). Neither of those is the case here – the Trustee has registered its claim on title (first in the judgment roll and later in the parcel register), and there isn't a sale by the Gavels that yielded a nil benefit to them; Ms. Gavel repurchased her (calculated) equity and Mr. Gavel's obligations remain to be determined and satisfied.
>
> [30] I followed both *Wadden* and *Ross* in deciding that the McInnis' Trustee could **(and indeed must)** calculate the balance payable to the estate based on the pre-discharge actual value, not that previously and mistakenly calculated. The issue then became whether the Trustee was otherwise estopped from asserting to the contrary.

> [31] In discussing this point, I doubted – as I have before – the decision of Registrar Cregan in *Re Johnson*, 2006 NSSC 384. I reiterate those doubts.
>
> [*Emphasis added*]

[42] After quoting from the *Wadden* decision, which explains that issue estoppel only applies where the issue is the same as the one decided in the prior judicial decision, the Registrar continued:

> [34] I also reiterate my doubts that issue estoppel has a broad scope in proceedings such as this as there is an entire class of stakeholders – that is, creditors – who are left out of the analysis. I need not pursue that inquiry today.
>
> [35] The Trustee is therefore not estopped from re-calculating *Mr. Gavel's* equity on these facts at any time prior to the discharge hearing. Indeed, it will be recalled that the Trustee calculated the equity twice – the second time to deduct the notional mortgage penalty, of which I approve.
>
> [36] I would point out as a matter of course that it is not only permissible, but common, for the Trustee to embark on this recalculation exercise quite aside from intervening issues such as insurance. New information on value may come to light (as indeed was the case in *McInnis*); a non-exempt asset either unknown or contingent at the time of filing may become choate (such as an inheritance or other non-exempt lump sum); or other rights or obligations may accrue during the bankruptcy that were unknown, misconstrued, or poorly valued at the time of filing. Simply saying "the Trustee told me such-and-so" or "I thought such-and-so from what the Trustee told me" does not, *alone and in itself*, give rise to issue estoppel. While again I doubt *Johnson, supra*, I reiterate that that case went much further – there was action, over a period of years, by the bankrupt in reliance on the assertions of the Trustee that it would take no steps to realize on the property. There is no such evidence here. Similarly, there is no assertion that the Trustee disclaimed or otherwise recused itself from its claim to Mr. Gavel's obligations, as was the case with *Ross* (a disclaimer coupled with a judicial conditional order).
>
> [*Emphasis added*]

[43] The Registrar rejected Mr. Hill's argument that the trustee's agreement to surrender its interest upon the payment of approximately $10,000 was binding on it:

> [37] Mr. Hill, in his brief, asserts:
>
> Here, the Trustee agreed to surrender its interest upon the payment of approximately $10,000. The fact there was mortgage insurance does not vitiate that agreement. Estoppel applies.

[38] No, it doesn't.

[39] Mr. Gavel did not indicate his agreement; there is no indication he even responded to the Trustee's overtures. Certainly nothing from the benefit was applied and then only with respect to the interest being re-acquired by Ms. Gavel. Most importantly, there is no judicial proceeding resulting in an absolute or conditional order – unlike in *Ross* or *Wadden*. And, as I will now discuss, even if there was an agreement as between bankrupt and Trustee (as opposed to a unilateral communication from the Trustee), it does not fetter the Court. If it ever did – which I doubt - it doesn't now.

[*Emphasis added*]

[44] The Registrar proceeded to consider whether the Court was bound by the equity calculations of the trustee:

Issue 3: Is the Court bound by the calculations of the Trustee?

[40] Short answer: No.

…

[44] Mr. Hill indicated that he…had in mind Directive 12…which was in fact revoked in August of 2009. The Directive was referred to by Registrar Cregan in *Re McCurdy* [2006 NSSC 125, addendum at 2006 NSSC 312]….

The point I was attempting to make was that when a trustee comes to a "number", and agrees with the bankrupt that upon payment of same the trustee will issue a certificate of discharge, the trustee ought to be bound, and the court should exercise its discretion by issuing an order in conformation with the trustee's agreement with the bankrupt. This should be particularly true where, as here, there are joint bankrupts and one makes payment based upon that agreement, while the other does not at the time because of exigent circumstances. [emphasis added in original]

[45] Let's de-pack that.

[46] There are a full dozen reasons why this is a spurious argument, one which I hope experienced counsel does not again choose to present in this Court, either in the broad form presented in oral argument, or the more limited "fetter your discretion" iteration cited in the email above.

…

[58] Twelfth, to say "I am bound by what the Trustee has calculated" would in effect overrule the result in *McInnis, supra*, in which the Trustee had made calculations – and indeed set the matter for Court – only to discover that they were incorrect and substantially below the actual amounts at hand. It would allow notional to triumph over reality.

> [59] Trustees recalculate obligations all the time. So does the Court. I have repeatedly said this is not a rubber stamp forum, or one which is bound by the practices of Firm X or Firm Y. Indeed, Justice Gabriel and I both have noted that while a Court may be guided by OSB guidelines, it is not bound by those either. If it is not bound by formal directives from the OSB, it is impossible to see how the Court can be bound by – sometimes wildly different – Trustee policies and practices. In this Court, calculations are applied consistently regardless of the Trustee or its practices; I am not so naïve as to believe that "trustee shopping" does not occur. I can't do anything about that until it gets to my Court. Once it does, I can.
>
> [*Emphasis added*]

[45] The Registrar went on to set out the same matrix for calculating notional equity as outlined in *Re McInnis*:

> [61] I laid out the default matrix for "notional equity" calculation in *Re McInnis, supra.* I start with the evidence of value at the applicable time. Here, I have only the realtor's opinion from some years ago and although I can take judicial notice of a robust real estate market of late, I have no evidence of any other higher value; it was not suggested that I commission another valuation and although I have that jurisdiction, I do not do so.
>
> [62] From that $259,000 valuation, I deduct commission at 5% plus HST, legal fees of $1,000 (or as in evidence and reasonable), mortgage, and penalty (3 months' at prevailing rates or as in evidence). I do not allow carrying costs, insurance, interest, or utilities where the bankrupt has had use or benefit of the asset.
>
> [63] I apply that methodology here, noting where I differ from the Trustee.
>
> [64] Realtor's opinion: $259,000.00.
>
> [65] Real estate commission (5% plus HST – the Trustee used 7%, a figure unacceptable to the Court; I use 5% as a recognition that most estate agent driven sales run between 5 and 6% plus HST, but many sales may be private or through discount agencies, on-line services, tiered-commission structures, *etc.*): $14,892.50.
>
> [66] Allowance for legal fees: $1,000 *including* HST (the Trustee used $2,000 *plus* HST, a figure I consider unreasonable for a notional regular residential sale of a Land Registered parcel).
>
> [67] Mortgage: $223,057.53 (the Trustee used $2**3**3,057.53 in the initial calculation, but this appears to be a typographical error as the net figure reflects $223,057.53).
>
> [68] Penalty: $1,321.00

> [69] HST is included where noted; the Trustee used a figure of $2,616.90 on commission and legal, whose calculation is not apparent to me.
>
> [70] Net (Court's calculation): $18,728.97
>
> [71] Mr. Gavel's portion: $9,364.48 (rounded).
>
> [72] There was some suggestion that Mr. Gavel may have paid $500 towards this; if so, he is to be credited for this or such other amount as may have been paid on *this* obligation.
>
> [73] It will be seen that this differs from the Trustee's second calculation of $5,937.28. For the reasons discussed above, the Court is not bound by this.
>
> [*Emphasis added*]

[46] From my review of the transcript, the Registrar wrote down the trustee's fees in this case for two reasons. First, the Registrar concluded that the trustee calculated the notional equity incorrectly. If the trustee had applied the Court's matrix, which the trustee admitted to being familiar with, each bankrupt would have been required to pay 14.5% more to their estates to repurchase the equity in the home. Second, once the property had been sold and its value determined by the free market, the trustee continued to rely on the notional equity figure. In the Registrar's view, by ignoring the Court's matrix, the trustee did not exercise due diligence in calculating notional equity. The trustee calculated the equity "improvidently", failing to pay "fair attention" to the interests of creditors. As the Registrar stated, the trustee had not "calculated equity, either on a notional and/or actual basis, accurately or fairly." This unfairness to creditors was compounded when the trustee declined to recalculate the bankrupts' obligations after the home sold for approximately $15,000 more than the original appraisal. By proceeding in this manner, the trustee would have deprived creditors of over $17,000.

[47] In deciding whether the Registrar erred, it is important to remember what is being challenged on this appeal and what is not. The Registrar's matrix for calculating notional equity – including the 5% real estate commission -- is not under appeal. Nor is his conclusion that the Court was not bound by the trustee's agreement with the bankrupts, executed before the bankrupts decided to sell the home. What *is* under appeal is the Registrar's decision to write down the trustee's fees. Mr. Hill, on behalf of the trustee, concedes that trustee's fees of a trustee who fails in his duties under the *BIA* may not be entitled to full compensation, but argued that there was no evidence before the Registrar that would allow him to find that the trustee had breached any of its duties. In John D. Honsberger and

Vern W. DaRe, *Honsberger's Bankruptcy in Canada*, 5th ed. (Toronto: Thomson Reuters Canada, 2017), the authors write at page 85:

> A trustee must act justly, fairly and honestly. A trustee must also act with a certain level of skill, prudence and reasonable diligence. The standard to be met is that of a reasonable business person administering his or her affairs. The trustee is a fiduciary and, at all times, must act in the best interests of the creditors, the bankrupt and the community.

[48] The evidence before the Registrar was that the trustee chose not to apply the Court's matrix for calculating notional equity, which resulted in the trustee undervaluing the equity available to creditors by $2,744. The evidence also established that, after the property was sold for approximately $15,000 more than the original valuation, the trustee intended to give the bankrupts, not the creditors, the benefit of the surplus equity. Based on that evidence, the Registrar concluded that the trustee failed to protect the interests of creditors through the exercise of due diligence in calculating the bankrupts' obligations. The Appellant has not convinced me that the Registrar erred in so concluding. For these reasons, the appeal is dismissed.

Conclusion

[49] The appeal is dismissed. I find there was ample evidence before the Registrar to support his conclusion that the trustee breached its duties, under the *BIA*, and his resulting decision to write down the trustee's fees.

Bodurtha, J.