

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**IN BANKRUPTCY AND INSOLVENCY**

**Citation:** Samson (Re), 2014 NSSC 303

**Date:** August 12, 2014

**Docket:** 34764

**Registry:** Sydney

District of Nova Scotia  
Division No. 1  
Court No. 34764  
Estate No. 51-1275482

In the Matter of the Bankruptcy of Stacy Ann Samson

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

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**Registrar:** Richard W. Cregan, Q.C.

**Heard:** August 7, 2014, in Sydney, Nova Scotia

**Counsel:** Michael Connor for Trustee, BDO

**Introduction**

[1] Stacy Ann Samson made an assignment in bankruptcy on October 19, 2009. She is a school teacher. She has two daughters, one born in 2000 and the other in 2002. This application is to set the terms for her discharge. She submitted a lengthy affidavit and attended the hearing by telephone.

[2] She and the children's father, Daniel Simard, have been involved in extensive divorce proceedings since 2007 resulting in various arrangements regarding property, maintenance, custody and access which were settled with a Corollary Relief Order in March of this year.

[3] This Order provides that the children's primary home is with their mother. Their father has access every second weekend. Specific arrangements are also provided for the holiday seasons.

[4] Prior to the Order they had lived for a time with their father. The parents have lived at some distance from each other. This necessitated transporting the

children back and forth some distance on a regular basis at significant expense.

This continues to be the case.

[5] Ms. Samson was severely injured in a motor vehicle accident in 1987. She received substantial compensation for her injuries. This money has long since been spent on her needs, the needs of the children, the purchase of a home, legal fees for the divorce and collateral issues.

[6] These proceedings have cost her over \$130,000 in legal fees. Bankruptcy followed. She lost the family home. She could not afford the payments. It was foreclosed.

[7] She continues to suffer from the effects of the accident. She needs special medical appliances and medications. She cannot drive an automobile because of the medication. She has to pay someone to drive the children to visit with their father.

[8] Since these proceedings began Mr. Simard has only made token payments of support. During a period when he had custody she had to pay him significant child support.

[9] She has had to move about the province to have teaching positions and living situations which address their particular needs.

[10] Mr. Simard does not have steady employment. He is required to pay \$320.13 monthly child support. He has, however, only paid \$800.00 in child support since 2007.

[11] Notwithstanding she receives a good salary as a school teacher, with all the past expenses, she had to make an assignment in bankruptcy. Since then in addition to the normal expenses of living, she has all the extra expenses arising from the arrangements for the children, and her health problems.

[12] The Trustee's calculations result in surplus income of \$12,956 over 21 months, an average monthly payment of \$617. She has paid \$1,620 to date for

surplus income. The Trustee has collected \$1,991.78 with the realization of assets. The receipts to date total \$3,611.78.

[13] Ms. Samson submitted a series of income and expense sheets covering several consecutive periods from October 2009 to January 2014.

[14] The Trustee has reviewed them and determined that in each period except that between January and August 2010 her expenses exceeded her net income in amounts ranging from \$49 to \$680 per month.

[15] Subsection 68(10) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“*BIA*”) directs the court to set surplus income “in accordance with the applicable standards, and having regard to the personal and family situation of the bankrupt”.

[16] If a fact is proved under Section 173, Subsection 172 (2) “requires the bankrupt, as a condition of discharge, to ... pay such money ... as the court may direct”. A fact under Section 173 has been proven, namely:

“(m) the bankrupt has failed to comply with a requirement to pay imposed under Section 68”.

[17] Ms. Samson has only paid 13% of the surplus income determined by the Superintendent's Directive.

[18] Those seeking discharge from bankruptcy are expected to contribute to their estates for the benefit of their creditors if required by the Directive. However, the *BIA* does recognize that there will be situations where the Directive asks too much from them. The courts must balance those two factors.

[19] Ms. Samson has a good income. The demands on it have been substantial. She has many extraordinary expenses. However, I think balancing these factors require a further contribution.

[20] She will be entitled to her discharge upon paying a further \$1,000 into her estate and completion of any outstanding duties.

R.

August 12, 2014

Halifax, NS