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Docket: BK 22-02-02044
(Brandon Centre)
Indexed as: Bankruptcy of Verne Milton Percival
Cited as: 2024 MBKB 45

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

IN THE MATTER OF THE BANKRUPTCY OF: VERNE MILTON PERCIVAL	)	Victoria Doell
	)	the Trustee
	)	
	)	Soni Nayak
	)	for the Bankrupt
	)	
	)	Eva Mendez
	)	for the Office of the
	)	Superintendent of Bankruptcy
	)	
	)	Reasons for Decision:
	)	March 11, 2024

REGISTRAR PATTERSON

INTRODUCTION

[1] Verne Milton Percival (the "Bankrupt") made an assignment in personal bankruptcy for the benefit of his general creditors on October 20, 2021 (the "date of bankruptcy").

[2] The Bankrupt has now applied for a discharge from bankruptcy in accordance with the ***Bankruptcy and Insolvency Act***, R.S.C., 1985, c. B-3 (the "***Act***").

[3] This is the first bankruptcy for the Bankrupt (he has never made a proposal pursuant to the ***Act***).

[4] The Trustee has opposed the discharge application, and requested that a conditional discharge be pronounced, with the amount payable by the Bankrupt to be as determined "within the discretion of the Court".

[5] In addition, the Office of the Superintendent of Bankruptcy (the "OSB") has opposed the Bankrupt's application for a discharge, and concurs with the Trustee (submitting that there ought to be a payment obligation required of the Bankrupt as a condition of discharge, with the amount thereof to be as determined within the discretion of the Court).

[6] Counsel for the Bankrupt confirmed that while the Bankrupt is not opposed to the Court pronouncing a conditional discharge, it is proposed that the sum payable by the Bankrupt should be in an amount of $7,500.00.

[7] Based upon the foregoing, the Court has been tasked with considering whether a conditional discharge is appropriate, and if so, determining a reasonable quantum that ought to be payable by the Bankrupt, while balancing factors such as the integrity of bankruptcy system and recovery for creditors with relief for the Bankrupt from his liabilities.

BACKGROUND

[8] The Bankrupt is 74 years old, and currently resides within the Rural Municipality of Deloraine-Winchester, Manitoba.

[9] Deanna Arlene Hemeryck, also known as Deanna Percival ("Deanna"), is the Bankrupt's spouse. They were married on April 22, 1972, and have two adult children.

[10] On or about the end of 2020 or early in 2021, the Bankrupt and Deanna separated.

[11] Within the Statement of Affairs completed by the Bankrupt dated October 20, 2021 (the "Form 79"), it is confirmed that as of the date of bankruptcy, the Bankrupt was self-employed, operating "Percival Trucking" (a self-proprietorship), as well as being employed on a seasonal part-time basis as a truck driver for Nutrien Ltd.

[12] As set forth within the Form 79, the Bankrupt had unsecured liabilities totaling an amount of $389,650.00 as of the date of bankruptcy. No secured or preferred liabilities were disclosed by the Bankrupt within the Form 79.

[13] In addition to the Bankrupt's liability in favour of Canada Revenue Agency ("CRA") for the sum of $128,000.00 as of the date of bankruptcy, the Form 79 confirmed the following credit card debt of the Bankrupt:

a) BMO MasterCard: $14,000.00;
b) Capital One MasterCard: $17,000.00;
c) CIBC Visa: $28,500;
d) Royal Bank Visa: $11,000;
e) Scotiabank Visa (account 4537…): $25,800.00;
f) Scotia Bank Visa (account 4838 …): $29,000.00;
g) TD Canada Trust Visa: $27,400.00;
h) Visa Desjardins: $6,800.00; and

Note: The foregoing credit card liabilities totaled an amount of $159,500.00 as of the date of bankruptcy.

[14] The Form 79 also detailed that the Bankrupt had assets valued in an amount of $170,542.15 as of the date of bankruptcy (all of which were claimed to be excluded).

[15] Aside from his furniture and personal effects, as well as a 2000 Toyota Tundra, the Husband disclosed having a registered retirement income fund ("RRIF") with Richardson Wealth, which was valued in an amount of $166,742.15 as of the date of bankruptcy.

[16] The Report of the Trustee dated June 7, 2022 (the "Form 82") confirmed that the Trustee opposed the Bankrupt's application for discharge pursuant to the following grounds:

a) The bankrupt failed to submit income and expense reports as required;
b) The bankrupt failed to provide the Trustee with the information needed to determine the average monthly income in accordance with Directive 11R2;
c) The bankrupt failed to respond to the trustee's requests for information; and
d) The bankrupt was unable to explain the multiple forms of credit obtained that was maxed out, as well as $75,000 in cash advances taken in the months leading up to the filing of the bankruptcy.

[17] Within the balance of the Form 82, a further basis for opposing the Bankrupt's discharge application was cited by the Trustee, in reliance upon

section 173(1)(o) of the ***Act*** (the Trustee contends that the Bankrupt failed to perform the duties imposed under the ***Act***).

[18] The Form 82 recommended that the Bankrupt's discharge application be adjourned *sine die* initially, so as to allow the Bankrupt an opportunity to complete his outstanding bankruptcy duties.

[19] It was also confirmed within the Form 82 that the Bankrupt had been examined by the OSB on January 13, 2022, resulting in issuance of a report dated January 18, 2022 (the "OSB Report").

[20] The OSB Report described that the discharge request of the Bankrupt could be refused, suspended or granted conditionally pursuant to the ***Act***, in reliance upon section 173(1)(a) (the assets of the Bankrupt are not of a value equal to $.50 on the dollar of the amount of the Bankrupt's unsecured liabilities) as well as section 173(1)(e) (the Bankrupt has brought on or contributed to the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the Bankrupt's business affairs).

[21] A Notice of Intended Opposition to Discharge of Bankrupt dated June 7, 2022 was filed by the Trustee (the "Trustee's Form 81").

[22] The OSB also filed a Notice of Intended Opposition to Discharge of Bankrupt dated January 18, 2022 (the "OSB's Form 81"), citing the same grounds as reviewed within the OSB Report.

DISCHARGE HEARING

[23] The discharge application of the Bankrupt proceeded over two separate days, with the Trustee confirming that upon all creditors being served, the only opposition was from the Trustee and the OSB. No inspector was appointed.

[24] The documentation entered as exhibits for the discharge hearing are as follows:

a) Exhibit "1" is the Bankrupt's affidavit sworn December 30, 2022 (the "Bankrupt's December 2022 Affidavit").

b) Exhibit "2" is a copy of the income and expense reports of the Bankrupt filed on January 23, 2023.

c) Exhibit "3" is the further affidavit of the Bankrupt, sworn April 13, 2023 (the "Bankrupt's April 2023 Affidavit").

d) Exhibit "4" is the affidavit of the Trustee, sworn March 8, 2023 (the "Trustee's Affidavit").

e) Exhibit "5" is a copy of a letter dated October 14, 2022 from CRA, which was addressed to the Bankrupt (the "CRA Letter"). The CRA Letter advised that in order to complete assessment of the Bankrupt's 2021 income tax return, more information was required. As the Bankrupt had claimed that he made support payments in favour of Deanna totaling $31,500.00 during 2021, the relevant portion of the CRA Letter stated as follows:

> "... to support your claim for the allowable deduction of support payments made, further receipts and supporting documents are required. As well as a copy of the separation agreement".

f) Exhibit "6" is a copy of the Claims Register filed by the Trustee on March 10, 2023 (which outlined the status of the various claims submitted by the unsecured creditors, the largest of which included CRA for the sum of $128,000.00).

g) Exhibit "7" is a copy of the 2020 Notice of Re-assessment issued to the Bankrupt by CRA on March 10, 2023 (the "CRA Notice"). The CRA Notice confirmed that upon re-assessment of the Bankrupt's 2020 income tax return, he was required to remit an amount of $10,020.29 to CRA.

[25] The Bankrupt's December 2022 Affidavit is in the standard format which is customarily utilized for discharge applications in Manitoba.

[26] The following exhibits are attached to the Bankrupt's December 2022 Affidavit:

a) Exhibit "A" is a copy of the Bankrupt's Financial Statement (from December of 2022);

b) Exhibit "B" is a copy of a list of the Bankrupt's assets (in December of 2022);

c) Exhibit "C" consists of copies of various financial reporting documentation, such as but not limited to monthly income and expenses summaries, bank statements and cancelled cheques (which evidenced payment in an amount of $3,500.00 monthly in spousal support for Deanna); and

d) Exhibit "D" is a copy of a one page letter from Dr. Sandeep Singh Thind of the Deloraine Medical Clinic, dated November 3, 2022 (the "Medical Report"). The Medical Report confirmed as follows:

> "Verne Percival is a 73-year-old gentleman with hx of Diabetes, Hypertension, Hyperthyroid, Left knee Osteoarthritis and Bilateral hand Osteoarthritis.

Note: a listing of the medications currently prescribed to the Bankrupt was also included.

[27] The following evidence can be summarized from the Bankrupt's December 2022 Affidavit:

a) The Bankrupt lived alone, and had no dependents.

b) As of December 2021, the Bankrupt was not employed, with his sources of income being net monthly pension benefits in an amount of $4,235.05 from Manitoba Hydro, as well as $908.91 from Canada Pension Plan ("CPP") and $666.83 from Old Age Security ("OAS"), for total net monthly income of $5,810.00.

c) The Bankrupt had been employed with Manitoba Hydro for over forty years, retiring on January 1, 2009.

d) The Bankrupt cited the reasons for his assignment in bankruptcy as being unable to keep up with financial obligations, due to marriage difficulties and an unresolved debt with CRA.

e) According to the Bankrupt, his trucking business was heavily impacted for a period of over two years, due to adverse weather conditions as well as the Covid-19 global pandemic.

f) On December 31, 2020, the Bankrupt says Deanna advised him that she wanted to separate.

g) A form of separation agreement (the "Separation Agreement") was prepared and signed by the parties, with their signatures being witnessed by a Commissioner for Oaths on May 3, 2021.

h) Pursuant to the Separation Agreement, the Bankrupt did not pursue any property equalization from Deanna in accordance with ***The Family Property Act***, C.C.S.M. c. F25 (the "***FPA***").

i) The Separation Agreement sets forth that the Bankrupt agreed to pay spousal support to Deanna in an amount of $3,500.00 monthly.

j) In accordance with the Separation Agreement, the Bankrupt transferred his interest in the family residence, a modular home located upon a leased lot at Monterey Estates in Brandon (the "Brandon Home"), to Deanna for consideration of $1.00.

k) The Bankrupt also transferred his interest in two cottage properties, located at 515 Colquhoun Drive ("515 Colquhoun") and 517 Colquhoun Drive ("517 Colquhoun"), in the Rural Municipality of Deloraine-Winchester (collectively, the "Lake Properties"), to Deanna for consideration $1.00.

l) There was no mortgage, lien or security registered against the titles for the Brandon Home and the Lake Properties (these properties were "debt free" at the time of the Bankrupt transferring his interests to Deanna).

m) The Bankrupt described that he presently suffers from health issues including but not limited to diabetes and arthritis (which made even part-time employment difficult for the Bankrupt).

n) It was admitted by the Bankrupt that during the 1990's, he participated in several seminars which focused upon certain income tax reduction methods (stating that he subsequently discovered these seminars were "a scam").

Further evidence from the Bankrupt

[28] During the course of the first of the two days for this discharge hearing, there was no opposition on the part of the Trustee, or the OSB, with the Bankrupt providing further evidence, beyond the Bankrupt's December 2022 Affidavit.

[29] As a result, the Bankrupt testified with respect to the following during questioning from his counsel:

a) The Bankrupt is wishing to vary and reduce his monthly spousal support obligation to Deanna, but nothing had been commenced in this regard to this point.

b) When the Lake Properties were initially purchased (with an older cottage on each lot), the Bankrupt advised that he paid $20,000.00 for each property.

c) The Bankrupt believed that "one would be lucky" to sell the Lake Properties for $30,000.00 each in today's market. As described by the Bankrupt, the Lake Properties are located adjacent to each other, and are pie shaped lots, with each property having forty feet of frontage.

d) With respect to the Separation Agreement, the Bankrupt was not certain, but believed Warren Barber, K.C., a solicitor from Brandon who also practices in the Deloraine area, was possibly the lawyer with whom the Bankrupt and Deanna met for an initial consultation.

e) The Bankrupt could not recall who prepared the Separation Agreement, but remembered that the amount of $3,500.00 monthly for spousal support was suggested by Deanna, to which he agreed.

f) As to the Brandon Home, the Bankrupt could not remember the approximate date when he transferred his interest to Deanna (for consideration of $1.00).

g) The Bankrupt indicated that Deanna subsequently sold the Brandon Home, although he could not recall for what sale price.

h) At the time when the Bankrupt transferred his interest in the Brandon Home to Deanna, he had no idea as to its fair market value.

i) When the Bankrupt and Deanna purchased the Brandon Home, which he believed was on or about 2003, the purchase price was approximately $150,000.00.

j) The Bankrupt could not recall the approximate month in which he transferred the Lake Properties to Deanna, or generally, how far in advance it was to making his assignment in personal bankruptcy (in October of 2021).

k) It was confirmed by the Bankrupt that he was not sure where the funds went insofar as the significant cash advances that he received prior to separation. The Bankrupt was adamant, however, that the funds were not utilized for gambling.

Summary of Trustee's position

[30] At this juncture in the proceedings, the Trustee submitted that a conditional discharge should be pronounced for the Bankrupt (asserting that more than one fact had been established pursuant to section 173(1) of the ***Act***).

[31] With respect to what evidence the Court should prioritize when determining the extent of the Bankrupt's payment obligation, the Trustee emphasized that almost $160,000.00 in credit card debt was amassed by the Bankrupt over a relatively short period of time, and there was also a significant sum owing in favour of CRA ($128,000.00). The Trustee further noted that there was incomplete disclosure presented on behalf of the Bankrupt (an illustration being that there was no opinion as to value or appraisal with respect to the fair

market value of the Brandon Home, or the Lake Properties, when transferred by the Bankrupt to Deanna).

Summary of OSB's position

[32] From the perspective of the OSB, Ms. Mendez expressed the following concerns in relation to the Bankrupt and his discharge application:

a) Commencing at paragraph 10 of the OSB Report, it is noted that the Bankrupt advised the last time he had obtained a credit card was around 2019, which was not accurate. The available bank statements disclosed that the Bankrupt had applied for his Scotia Momentum credit card in January of 2020.

b) At paragraph 11 of the OSB Report, it is confirmed that the Bankrupt was unable to explain how the Scotia Momentum credit card was obtained in January of 2020, and then maxed out by March of 2020 (which added an amount of $25,800.00 to the Bankrupt's liabilities in just two months).

c) In addition, the OSB Report notes that Bankrupt was unable to satisfactorily explain the numerous charges which were incurred concerning telephone numbers in Brampton, Ontario and surrounding areas (between January and March of 2020).

d) When questioned by the OSB, the Bankrupt clarified that he had not vacationed over the last five years, although he did travel for work purposes.

e) As set forth within paragraph 13 of the OSB Report, the Bankrupt was questioned about whether he had ever given or lent out his credit cards to someone else. The Bankrupt stated that this had never occurred.

f) It was highlighted at paragraph 14 of the OSB Report that the Bankrupt was unable to provide an explanation regarding the cash advances in an amount of approximately $75,000.00 which occurred in the months leading up to the Bankrupt making an assignment in bankruptcy.

g) Upon inquiry by the OSB, the Bankrupt was also unable to provide any explanation as to why he obtained multiple credit cards, and then maxed out these credit cards within only a few months.

[33] Ms. Mendez confirmed that an amount of approximately $159,000.00 in credit card debt was incurred by the Bankrupt as of the date of bankruptcy, which involved eight separate credit cards (all of which is confirmed within the Form 79). For clarification, the cash advances or withdrawals of approximately $75,000.00 are included within the total credit card debt mentioned by Ms. Mendez.

[34] The inability, or unwillingness, of the Bankrupt to provide informative responses to straightforward questions was a source of frustration to the OSB.

[35] As an illustration, the Court notes the following from the OSB Report:

a) Question 75: The Bankrupt was asked if he had obtained any cash advances with credit cards within 24 months prior to the date of bankruptcy, to which he answered "Yeah. I think I did. I don't know

how much. You go on the road and get busy". When asked as a follow up question if he travelled for work purposes, the Bankrupt replied "Near the end, it was very local. You never know. It could be anywhere".

b) Question 120: When asked how long he would typically be away when travelling for work purposes, the Bankrupt replied that "Most of the trips are day trips."

c) Question 122: The Bankrupt was asked if he had paid for any trips with his credit cards in the 12 months prior to the date of bankruptcy, to which he responded "I probably did but minimal. I don't know for sure but probably did. Just meals and accommodation sometimes".

d) Question 125: A question was put to the Bankrupt with respect to how the Separation Agreement was arranged with Deanna, and why his RRSP's were not divided. The Bankrupt's answer was that "never really came up".

e) Question 126: When asked to explain how he had signed up for the Scotia Momentum credit card in January of 2020, and maxed this credit card out just months later (by March of 2020), the Bankrupt stated "I can't remember". A follow up inquiry was made of the Bankrupt for clarification as to why there were no local charges, to which the Bankrupt replied "I might have been hauling a bit of hay back then. I was doing a bit of hay hauling for a short period of time".

f) Question 127: The Bankrupt was asked how several forms of credit cards were obtained and then maxed out by him within a short period of time by way of cash advances. The Bankrupt answered "I can't remember".

g) Question 128: When asked to explain why approximately $75,000.00 in cash advances were taken out by him in 2020, the reply of the Bankrupt was "I'm sorry, I don't know. My mind is going blank".

[36] Ms. Mendez advised that the evidence confirms the Bankrupt applied to RBC on December 30, 2020 for a line of credit, and had maxed it out by May of 2021 (for the sum of $30,000.00). It was further noted by Ms. Mendez that in April of 2021, there was almost $1,000.00 withdrawn daily from the Bankrupt's account.

[37] Concerning the CIBC Visa, Ms. Mendez stated there was an amount of $10,800.00 in cash advances by the Bankrupt during March of 2020. She advised that a further sum of $12,000.00 was withdrawn by the Bankrupt in April of 2020, maxing out the available credit.

[38] It is on this basis that the OSB contends a fact pursuant to section 173(1)(e) of the ***Act*** has been established, which along with section 173(1)(a), gives rise to a basis for the Court to pronounce a conditional discharge.

Summary of Bankrupt's position

[39] Counsel for the Bankrupt made a number of submissions, which can be summarized as follows:

a) It was emphasized that CRA had not filed a notice of objection to the Bankrupt's discharge application. There was also no CRA printout or summary in evidence which confirmed the principal amount outstanding, and how much of the balance owing to CRA included penalty and interest.

b) Counsel for the Bankrupt stated that the Lake Properties were owned by the Bankrupt together with his brother, such that the equity transferred in favour of Deanna would equate to only one-half of the applicable fair market value.

c) Although the Medical Report is brief, it nonetheless serves as confirmation that the Bankrupt is unfortunately experiencing a number of health issues presently, for which he takes a number of prescriptions. The Medical Report does not speak to the Bankrupt's functionality though, and issues such as but not limited to his ability to work in a part-time position that is not physically demanding in order to earn some income.

d) It was proposed by counsel for the Bankrupt that an amount of $7,500.00 would be a reasonable sum for the Bankrupt to pay as a condition of being discharged, with there to be monthly payments of a sum as the Court directs, taking into account the financial circumstances of the Bankrupt (being in his 70's, retired, and in reliance upon pension income solely).

e) According to counsel for the Bankrupt, the objective of bankruptcy legislation is not to punish a bankrupt, and instead, should focus upon rehabilitation of a bankrupt as well as reasonable recovery for creditors.

f) Counsel for the Bankrupt was candid in acknowledging that the Bankrupt could not answer where the funds went from the advances involving his credit cards. That being stated, it was suggested that these funds may have been used by the Bankrupt towards living expenses, given his health issues, reduced work and the Covid-19 pandemic, all of which the Bankrupt endured during 2020 and thereafter.

Continuation of the Discharge Hearing

[40] At the conclusion of the initial date scheduled for the discharge hearing, the Court expressed that it was not satisfied it had sufficient evidence to properly consider these circumstances. The Court noted the following:

a) A copy of the Separation Agreement entered into between the Bankrupt and Deanna was not in evidence;

b) There were no copies of the transfer of land or status of title concerning the Lake Properties that had been transferred to Deanna; and

c) There was no bill of sale or any documentation presented with respect to the Brandon Home which was transferred to Deanna.

[41] Accordingly, the matter was adjourned to a subsequent date for continuation of the discharge hearing, with expectation that the aforementioned evidence would be secured and filed, as best as possible. In particular:

a) The Trustee provided an undertaking to produce a copy of the Separation Agreement, as well as to make her best efforts to determine if there is any evidence which confirms or suggests that the Separation Agreement had been prepared by a lawyer.

b) A further affidavit was to be filed on behalf of the Bankrupt, including supporting documentation in relation to the transfer by the Bankrupt of the Lake Properties and the Brandon Home in favour of the Deanna. For instance, searches from the Property Registry (Land Titles) should reveal details such as but not limited to the dates of transfers and what values were utilized for the Lake Properties.

c) It was also expected that the Bankrupt would consider and provide any further evidence available insofar as who was the lawyer that met with the Bankrupt and Deanna concerning the Separation Agreement, and if there any financial disclosure exchanged between the parties so as to give rise to agreeing upon a monthly spousal support obligation (how it was determined, and is the obligation to be indefinite or reviewable). In addition, for property purposes, were there any property equalization calculations prepared, and if so, those details should be produced for review by the Court.

[42] The Court confirmed that further submissions would be welcomed from the parties in relation to any additional evidence presented.

Further evidence of the Trustee

[43] With respect to the Trustee's Affidavit which was subsequently filed, Exhibit "A" thereto is a copy of the Separation Agreement entered into by the Bankrupt and Deanna.

[44] The following aspects of the Separation Agreement are of relevance:

a) At page 1, paragraph 2, it reads that as of February 1, 2021, following numerous "trial separations", the parties agreed to separate.

b) On page 2, at paragraph A, it states that on or about April of 2020, the parties executed documents in order to transfer title for the Brandon Home as well as the Lake Properties to Deanna.

c) Paragraph C confirmed that household goods and personal property had already been divided by agreement between the parties, while paragraph D confirmed that any financial accounts had been satisfactorily divided between the parties.

d) On page 3, under the heading of "spousal support", paragraphs 1 and 2 reads as follows:

> 1. The parties have mutually agreed that Verne Milton Percival shall pay spousal support to Deanna Arlene Hemeryck the amount of $3500 per month commencing on February 1, 2021 and due on the first day of the month thereafter. The spousal support shall continue indefinitely.
>
> 2. This spousal support shall terminate sooner than the above-stated date upon the death of either party or in the event of cohabitation of the party receiving support in a relationship comparable to marriage, or the re-marriage of the party receiving support.

e) The Separation Agreement was signed by both parties on May 3, 2021, at page 4 thereof. The signatures were witnessed by a Commissioner for Oaths for Manitoba (the name of the witness is not noted and cannot be deciphered from the signature).

[45] The Trustee confirmed that the pre and post-bankruptcy income tax returns of the Bankrupt for 2020 and 2021 had been filed, but not yet processed.

[46] It was also confirmed by the Trustee that the Bankrupt had no surplus income obligation. If the quantum of monthly spousal support payments was varied, however, the Trustee advised that there could be a resulting surplus obligation on the part of the Bankrupt.

Further evidence of the Bankrupt

[47] With respect to the Bankrupt's April 2023 Affidavit, the following documentation is attached as exhibits:

a) Exhibit "A" is a copy of the 2020 Real Property Assessment for 515 Colquhoun, as well as the 2020 Real Property Assessment for 517 Colquhoun (the Lake Properties are both located on the Canadian side of Lake Metigoshe).

b) Exhibit "B" is a copy of the 2018 Property Tax Bill for 515 Colquhoun, as well as a copy of the 2018 Property Tax Bill for 517 Colquhoun.

[48] The following further evidence is confirmed within the Bankrupt's April 2023 Affidavit:

a) At paragraph 6, the Bankrupt stated that the Lake Properties were transferred to Deanna well prior to making his assignment in bankruptcy.

b) The Bankrupt claims that the Lake Properties were owned jointly with his brother, although there was no status of title included in evidence, and each Real Property Assessment (for 2020) and Property Tax Bill (for 2018) were addressed to the Bankrupt solely.

c) It is the Bankrupt's position that the Lake Properties each had a value of approximately $30,000.00 ($60,000.00 in total) when transferred by him to Deanna.

d) Despite the above noted position of the Bankrupt, the 2020 Real Property Assessment described that the assessed the value of 515 Colquhoun was in an amount of $61,500.00 (land $28,900.00 and building $32,000.00), while the 2020 Real Property Assessment for 517 Colquhoun sets forth a total assessed value of $61,600.00 (land $29,600.00 and building $32,000.00).

e) The assessed value of 515 Colquhoun pursuant to the 2018 Property Tax Bill was in an amount of $68,700.00, while the total assessed value of 517 Colquhoun was described to in an amount of $68,200.00 in accordance with its 2018 Property Tax Bill.

f) According to the Bankrupt, the Lake Properties were transferred to the Deanna on or about 2020 "because my son was residing primarily with her and because of his health issues".

g) The Bankrupt advised that he been married for over forty-eight years, and that Deanna was a stay-at-home mom for the majority of their marriage. The Bankrupt indicated that the last time Deanna worked outside the home was in 2003.

h) According to the Bankrupt, their son Scott "needed medical assistance and hence it was decided during our marriage that she would stay at home to care of our son while I worked to support the family".

i) The Bankrupt stated that Scott was diagnosed with Gilliam Barre Syndrome on April 8, 2018. In addition to suffering from depression and anxiety, the Bankrupt indicated that Scott also has Type I diabetes. On October 22, 2022, Scott was then diagnosed with pericarditis, and on December 22, 2022, was hospitalized after having a grand mal seizure.

j) Given all of the health difficulties suffered by Scott presently (as described within paragraphs 10 through 16 of the Bankrupt's April 2023 Affidavit), the Bankrupt confirmed that he travels multiple times per week to visit with and assist Scott. The trip takes him approximately 90 minutes each way to and from Brandon (to Deanna's residence, where Scott is currently living).

k) As to the Separation Agreement, the Bankrupt noted that "we did consult a lawyer in Brandon", although he recalled there being a request for what he believed to be a huge retainer in order for the lawyer to assist with drafting and finalizing the domestic contract.

l) The lawyer with whom the parties consulted had advised that due to their long-term marriage, spousal support would be an indefinite obligation. The Bankrupt and Deanna only paid for an initial consultation with the lawyer.

m) Based upon what was discussed with the lawyer, the Bankrupt and Deanna prepared the Separation Agreement themselves, which addressed issues such as division of property and spousal support ("to avoid costs and legal fees").

n) At this point in time, on or about early 2021, the Bankrupt confirmed that his annual income was approximately $92,000.00, while Deanna was not earning any income at that time.

[49] The Trustee requested an opportunity to cross-examine the Bankrupt, which was approved and yielded the following details:

a) The Bankrupt was adamant that the Lake Properties were jointly owned with his brother, even though it is only the Bankrupt's name that appears on the 2018 Property Tax Bills and 2020 Real Property Assessments for these properties. The Court pointed out, however, that for 515 Colquhoun, and in 2018 only, there was a notation of "½" added in the description area for that particular Property Tax Bill.

b) Whether the above noted "½" is recognition of the Bankrupt having a half interest in 515 Colquhoun, in 2018, has not been clarified as no title

search or records from the Property Registry (Land Titles) were entered into evidence on behalf of the Bankrupt.

c) It was pointed out by the Trustee that even though the Bankrupt believed each of the Lake Properties had a value of only $30,000.00 each, this was his personal opinion and not supported by an opinion as to value or appraisal.

d) In addition, the Bankrupt conceded that the assessed values for the Lake Properties were considerably more than the values he had placed upon the properties ($68,060.00 and $67,000.00 respectively in 2018, and $61,060.00 and 61,200.00 respectively in 2020). The Bankrupt did note, however, that "there is no plumbing" at 517 Colquhoun, and that he and other area residents have challenged the local municipality concerning recent assessed values and the amount of taxes that are being levied. The Bankrupt did acknowledge though that he might have been able to receive $60,000.00 for each of the Lake Properties "if it was the right buyer."

e) As to when transfer of the Lake Properties occurred, the Trustee pointed out that BDO had done searches of the Property Registry (Land Titles) upon the Bankrupt making an assignment in bankruptcy, at which time there was no land located that was owned in the name of the Bankrupt. As a result, transfer by the Bankrupt of his interest in the Lake

Properties must have taken place prior to making his assignment in bankruptcy (although the Bankrupt could not remember).

f) The Trustee also noted that the Bankrupt's April 2023 Affidavit provided considerable evidence as to the health difficulties of his son Scott, but did not offer further details in relation to the $75,000.00 in cash advances or withdrawals and other credit card expenses incurred by the Bankrupt within a short period of time leading up to the date of bankruptcy. The Bankrupt acknowledged that he was still "having a tough time recalling" and that "it has been a blur".

[50] Ms. Mendez had no further questions for the Bankrupt on cross-examination.

[51] The Court allowed counsel for the Bankrupt to ask certain final questions of the Bankrupt, in view of the issues raised during cross-examination by the Trustee concerning the Bankrupt's April 2023 Affidavit. The following responses were noteworthy:

a) It was confirmed by the Bankrupt that he did not contact Monterey Estates in Brandon with respect to obtaining a copy of any assignment of lease which may have been prepared at the time when the Bankrupt transferred his interest in the Brandon Home to Deanna (if such documentation existed, there may or may not of been an indication as to the value of the mobile home at that time). In the alternative, a copy of the Bill of Sale between the Bankrupt and Deanna may or may not have

confirmed a value for the Brandon Home (even if it was being transferred to Deanna for a dollar). No Bill of Sale has been produced by the Bankrupt concerning the Brandon Home.

b) With respect to the frequent travel encountered by the Bankrupt to regularly visit his son Scott, paragraph 16 of the Bankrupt's April 2023 Affidavit indicated that a portion of the $75,000.00 in cash advances or withdrawals could have been utilized by him towards associated travel expenses.

c). It was reaffirmed by the Bankrupt that he does not recall the fair market value of the Brandon Home at the time it was transferred to Deanna. Similarly, no further details were shared insofar as the basis for establishing the Bankrupt's spousal support obligation in an amount of $3,500.00 monthly.

Further submission by the Trustee and the OSB

[52] The Trustee reiterated her prior position with respect to the Bankrupt's discharge application.

[53] Ms. Mendez made no further submissions on behalf of the OSB.

Further submission on behalf of the Bankrupt

[54] Counsel for the Bankrupt provided the following final comments:

a) Between the Bankrupt and counsel on his behalf, it was stated that efforts were made to secure additional information, especially concerning the $75,000.00 cash advances or withdrawals (although what is in

evidence represents all that was able to be presented on behalf of the Bankrupt).

b) When questioned by the Court as to why authorizations could not have been obtained from the Bankrupt, empowering his counsel to obtain further documentation, counsel for the Bankrupt confirmed that the Bankrupt had been asked to but did not provide any documentation from the Property Registry (Land Titles). As expressed by the Court, searches can be conducted online for a fee, with this being a task that could have been completed efficiently had counsel for the Bankrupt did it herself.

c) Counsel for the Bankrupt submitted that the amount payable by the Bankrupt as spousal support pursuant to the Separation Agreement is consistent with the recommended range is contained within the Spousal Support Advisory Guidelines ("SSAG's"), when one considers that the Bankrupt had an annual income of around $92,000.00 at the date of separation, versus Deanna with no employment income and having their adult son, Scott, live with her. That being stated, no SSAG's calculation was submitted in evidence on behalf of the Bankrupt, and it was not clarified if Scott is in receipt of any disability benefits or other income.

d) According to counsel for the Bankrupt, the relationship of the Bankrupt with Deanna was "on and off", and when he filed his assignment of bankruptcy approximately one year following their separation, the

Bankrupt had no knowledge or intention of preferring any claim of Deanna by transferring the Brandon Home and the Lake Properties.

e) Counsel for the Bankrupt mentioned that making an assignment in bankruptcy was not intended by the Bankrupt as a means to evade creditors.

f) As a result of encountering health issues, together with a shortage of work as of on or around 2020 and onwards, the Bankrupt's reported income in 2021 was far less than an amount of $92,000.00 which he had earned in 2020.

g) Counsel for the Bankrupt argued that "one cannot get blood from a stone", and that the Bankrupt has a "tight budget" as evidenced by his financial statement as well as income and expense summaries that have been filed.

h) As of the date of the second of the two hearing dates for consideration of the Bankrupt's discharge application, no variation proceeding in relation to the Bankrupt's spousal support obligation had been initiated.

i) Counsel for the Bankrupt suggested that the Bankrupt could reasonably pay an amount of $150.00 monthly to the Trustee (for the bankruptcy estate), and that over a period of two years, these payments, together with assignment of the Bankrupt's income tax refunds, if any, should be

sufficient for a $7,500.00 payment condition to be fully satisfied if so ordered by the Court.

ISSUES

[55] The issues to be determined in this case can be stated as follows:

a) Have any section 173(1) facts been established upon the evidence?

b) If so, and should a conditional discharge be pronounced for the Bankrupt, what payment obligations and terms should apply?

ANALYSIS

Jurisdiction

[56] At the outset, and while there was no issue or concern raised by any of the parties with respect to the issue of jurisdiction, I nonetheless confirm that I proceeded to hear the contested discharge application in accordance with sections 192(1)(c) and (j) of the ***Act***, which provide as follows:

> **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,
> …
> **(c)** to grant orders of discharge;
> …
> **(j)** to hear and determine any matter with the consent of all parties;
> …

Form 82

[57] Sections 170(1),(5),(6) and (7) of the ***Act*** confirm the following with respect to a trustee's report for discharge hearing purposes (such as the Form 82 in the case at bar):

> **Trustee to prepare report**
> **170(1) The trustee shall**, in the prescribed circumstances and at the prescribed times, **prepare a report**, in the prescribed form, with respect to
> **(a)** the affairs of the bankrupt,
> **(b)** the causes of his bankruptcy,
> **(c)** the manner in which the bankrupt has performed the duties imposed on him under this *Act* or obeyed the orders of the court,
> **(d)** the conduct of the bankrupt both before and after the date of the initial bankruptcy event,
> **(e)** whether the bankrupt has been convicted of any offence under this *Act*, and
> **(f)** any other fact, matter or circumstance that would justify the court in refusing an unconditional order of discharge,
> and the report shall be accompanied by a resolution of the inspectors declaring whether or not they approve or disapprove of the report, and in the latter case the reasons of the disapproval shall be given.
> …
>
> **Evidence at hearing**
> **(5) For the purposes of the application referred to in subsection (2), the report of the trustee is evidence of the statements therein contained.**
>
> **Right of bankrupt to oppose statements in report**
> **(6) Where a bankrupt intends to dispute any statement contained in the trustee's report** prepared under subsection (1), the bankrupt shall at or before the time appointed for hearing the application for discharge give notice in writing to the trustee specifying the statements in the report that he opposes at the hearing to dispute.
>
> **Right of creditors to oppose**
> **(7) A creditor who intends to oppose the discharge of a bankrupt on grounds other than those mentioned in the trustee's report shall give notice of the intended opposition,** stating the grounds thereof to the trustee and to the bankrupt at or before the time appointed for the hearing of the application for discharge.
> **(emphasis added)**

[58] Within ***The 2023-2024 Annotated Bankruptcy and Insolvency Act***", the long-standing authoritative treatise concerning bankruptcy and insolvency law authored by Houlden, Morowetz and Sarra (the "***2023-2024 Annotated***

Act"), the following comments are provided at Section 7.79 at the bottom of page 901 with respect to sections 170(1),(5),(6) and (7) of the ***Act***:

> **Since the report is evidence of the statements contained in it, it is unnecessary for the trustee to give oral evidence of what is contained in the report. Unless contradicted by other evidence, the court must accept the statements contained in the report. However the court is not bound by the trustee's report. The report is, however, entitled to considerable weight** (cases cited were omitted). **(emphasis added)**

[59] At Section 7.80 on page 902 of the ***2023-2024 Annotated Act***, it further states:

> **The bankrupt can contest the statements contained in the trustee's report and must**, **under section 170(6),** at or before the time appointed for the hearing of the application discharge, **give notice in writing to the trustee** specifying the statements in the report that he or she opposes at the hearing to dispute.
>
> **If the bankrupt does not give notice in writing as required by section 170(6), the court will take the facts as stated in the report as being established**. **Similarly, if the bankrupt calls no evidence to contradict what is contained in the report, the court will accept the facts as stated in the report** (cases cited omitted). **(emphasis added)**

[60] From the Court's perspective, there is little, if any, evidence contained within the Form 82 which is disputed or denied by the Bankrupt.

[61] Accordingly, and in consideration of section 170(5) of the ***Act***, the Form 82 represents evidence as to the facts and figures that are contained therein for purposes of this discharge hearing, subject only to the limited facts and figures that have been challenged by the Bankrupt within his affidavit and viva voce evidence.

Discharge considerations from the *2023-2024 Annotated Act*

[62] The following passages from the ***2023-2024 Annotated Act*** provide guidance to the Court in these circumstances:

> **Section 7:69 on page 895:**
>
> **A discharge is not a matter of right**: *Re Wensley (Trustee of)* (1985), 1985 CanLII 1416 (AB KB), 59 C.B.R. (N.S.) 95, 67 A.R. 184 (QB) (the other cases that were cited have been omitted). **Every application for discharge must be determined on its own particular facts and by the due exercise of judicial discretion**: *Re Young* (1928), 10 C.B.R. 53 (N.B.K.B.) (the other case cited has been omitted). **The *BIA* provides no guidance for the exercise of discretion except that the court must refuse an absolute discharge if a s.173 fact is proved against the debtor**: *Re Crowley* (1984), 1984 CanLII 5444 (NS SC), 54 C.B.R. (N.S.) 303, 66 N.S.R. (2d) 390, 152 A.P.R. 390 (T.D.)
>
> **One of the prime objects of the *BIA* is to enable an honest but enforcement debtor to obtain a discharge from his or her debts, subject to such reasonable conditions**, if any, as the court may see fit to impose, so that the debtor can make a fresh start: *Re Posner* (1960), 1960 CanLII 626 (MB KB), 3 C.B.R. (N.S.) 49 (Ont. S.C.).
>
> **Section 7:70 on page 896:**
>
> **The following factors** have been identified by the courts as being worthy of consideration in considering **applications for discharge by a person who is in bankruptcy for the first time:**
>
> > **a) the necessity for providing relief for a bankrupt from his or her financial obligations;**
> > **b) the integrity of the bankruptcy process itself and the public perception of the integrity of the process;**
> > **c) the amount that the creditors have received or may receive on their claims by way of dividend.**
>
> **Section 7:104 on page 907:**
>
> Section 172 sets out the orders that the court may make on an application for discharge. **If no facts are proved under section 173(1), one of the four orders set out in s. 172(1) may be made. If facts are proved under section 173(1), then one of three orders set out in section 172(2) may be made.**
> **(emphasis added)**

Discharge principles from case law

[63] With respect to the overarching principles to consider on a discharge application, the Honourable Registrar Thompson made the following observations in ***Gordon Harvey Avramenko (Re)***, ("***Avramenko***"), at paragraph 50:

> [50] The bankruptcy process is designed to address two societal objectives**: 1) to provide an equitable system for the distribution of a bankrupt's property to the bankruptcy creditors; and 2) the financial rehabilitation of the debtor;** *Alberta (Attorney General) v Moloney*, 2015 SCC 51, [2015] 3 SCR 327.
> **(emphasis added)**

[64] Similar commentary is contained within ***Martino (Bankruptcy) Re***, 2004 17978 (ON SC) (CanLII) ("***Martino***"), where it was stated by the court as follows (at paragraph 26 of the Endorsement):

> [26] **The decision on the granting or withholding of a discharge is discretionary, to be exercised upon well-known principles. There are many decisions which have held that in addition to balancing the interests of the creditors and the bankrupt, the integrity of the bankruptcy process must also be preserved. They include *Satish, Johnson, Katari* and *Raftis*.**
> **(emphasis added)**

[65] In ***Munro (Re)***, 2016 ABQB 541 ("***Munro***"), the decision issued by a registrar had been appealed, and the presiding justice noted the following (at paragraph 31):

> [31] The Registrar observed that **deterrence and punishment were among the goals to be considered in determining what discharge order to make.** In the context of considering the order to be made he said: (para. 29)
>
> > **Among the factors to be balanced are: rehabilitation or reform of the bankrupts' habits, deterrence and punishment, preservation of integrity of the system and the confidence of those who participate in it in good**

> **faith, and obtaining the highest possible dividend for creditors.**
> **(emphasis added)**

[66] Another decision from Saskatchewan is ***Kurtz (Re)***, 2015 SKQB 290 ("***Kurtz***"), where Registrar Thompson reviewed one of the aims of the ***Act***, namely, to assist an "honest but unfortunate debtor" (at paragraphs 12 and 13):

> [12] **The bankruptcy system was established to relieve the honest but unfortunate debtor from the crushing burden of his or her debts.** When an individual assigns in bankruptcy, most unsecured creditors are stayed from executing on their debt claims. If a bankrupt is honest and unfortunate and it is clear that he or she had no other option but bankruptcy, and if the bankrupt conducts himself or herself honestly and in accordance with his or her obligations under the *BIA* during the bankruptcy administration, then he or she will be eligible for an automatic discharge from bankruptcy within a prescribed period of time. Discharge from bankruptcy means that the unsecured creditors with proven claims in the bankruptcy will no longer be in a position to pursue the bankrupt for the pre-bankruptcy debts and the bankrupt will have an opportunity to start afresh.
>
> [13] **When a bankrupt conducts himself or herself dishonestly, either before the bankruptcy or during the course of the bankruptcy administration, the integrity of the bankruptcy system comes into question. It is not acceptable for a bankrupt to receive the protection and benefits of the *BIA* without having to meet his or her obligations. For the system to work, a bankrupt must disclose all of his or her property to the trustee. When a bankrupt hides assets from the trustee, so that he can shelter them from his creditors, this is abuse of the bankruptcy system.**
> **(emphasis added)**

Section 173(1) facts

s.173(1)(a) - the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities ... ;

[67] The Trustee submits that the evidence before the Court confirms this fact unequivocally, with the Form 82 detailing proven claims of unsecured creditors for the sum of $389,650.00 versus the Bankrupt disclosing that he had assets

valued in an amount of $170,542.15 as of the date of bankruptcy (all of which were claimed to be excluded).

[68] In addition, a sum of only $1,800.38 had been recovered by the Trustee as of the date of preparation of the Form 82, with it being anticipated that the estimated value of any assets to be realized would be just $9,291.57.

[69] As a result, it is the Trustee's position that the Bankrupt has not met the onus to satisfy the Court that this substantial indebtedness "has arisen from circumstances for which the Bankrupt cannot justly be held responsible".

[70] The OSB supports the Trustee's position in this regard.

[71] From the Bankrupt's perspective, there has been no specific argument advanced which explains or provides an answer as to why the Bankrupt should not be determined to be justly responsible for his significant liabilities as of the date of bankruptcy.

[72] Accordingly, I find that this particular fact pursuant to section 173(1)(a) of the ***Act*** has been sufficiently established by the Trustee.

s. 173(1)(e) - the Bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance and living, by gambling or by culpable neglect of the bankrupt's business affairs;

[73] The following excerpts from the ***2023-2034 Annotated Act*** are relevant to this case:

> **Section 7:169 on page 939:**
>
> The 5th fact in section 173 is that the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance and living, by gambling or by culpable neglect of his or her business affairs:

> To bring a case within section 173(1)(e), the speculation must be rash as well as hazardous. The "rash" applies to the conduct of the bankrupt alone, according to his or her conditions and circumstances and the facts of the particular case. Speculation that no reasonably careful person would enter into having regard to all circumstances, is a rash and hazardous speculation. The bankrupt was the sole operating mind of the related companies; he alone decided to drain their cash assets; and he did the trading without a broker or investment specialist. The bankrupt had shown no signs of remorse; his rehabilitation was questionable; and the integrity of the system would be impaired without an appropriate period of suspension: ***Fast v. Marathon Leasing Corp. (Trustee of)*** (2010), 2010 CarswellSask 496, 70 C.B.R. (5th) 38 (Sask. Q.B.)
>
> **Section 7:161 on page 939:**
>
> Although section 173(1)(e) refers to "rash and hazardous speculations", one transaction is sufficient: ***Re Deo*** (1985), 59 C.B.R. (N.S.) 175 (B.C S.C.).
> …

[74] It is submitted by the Trustee that there has been no denial by the Bankrupt that he amassed credit card debt of approximately $159,000.00 as of the date of bankruptcy, which involved eight separate credit cards and included cash advances or withdrawals of approximately $75,000.00.

[75] The Trustee has also emphasized that the Bankrupt did not dispute maxing out the RBC line of credit by May of 2021 (that he had applied for just four or so months earlier, on December 30, 2020) in an amount of $30,000.00, which included approximately $1,000.00 daily being withdrawn throughout April of 2021.

[76] Even with the CIBC Visa, the Trustee submits that the Bankrupt has not denied there being cash advances or withdrawals in an amount of $10,800.00 during March of 2020 alone, with another $12,000.00 by way of cash advances

or withdrawals in April of 2020, such that the CIBC Visa was maxed out by the Bankrupt.

[77] The OSB fully supports the Trustee's position in this regard.

[78] With respect to the Bankrupt, he has been unable to provide any explanation with respect to why multiple credit cards were acquired, and why these credit cards were maxed out within a limited period of time, with there being significant cash advances or withdrawals in certain months, despite nothing of significance being purchased or acquired with these funds.

[79] As stated by the Bankrupt, "it is a blur" insofar as what transpired in connection with the substantial debt that he incurred over what could be considered a relatively short period of time prior to the date of bankruptcy.

[80] The Court has a number of comments and concerns with respect to the Bankrupt's position, which can be summarized as follows:

a) Pursuant to section 170(5) of the ***Act***, the Form 82 represents evidence of the Trustee for purposes of this discharge hearing. In accordance with section 170(6), the Bankrupt is obligated to provide notice in writing to the Trustee in relation to any portions of the Form 82 which are opposed.

b) There was nothing provided to the Trustee, by the Bankrupt or on his behalf, which specified, in writing, what portions of the Form 82 are contested, if any.

c) In addition, the Bankrupt did not present evidence to contradict what is contained within the Form 82, other than disputing any suggestion that he

was intent upon frustrating the rights of his creditors by transferring his interest in the Brandon Home and the Lake Properties to Deanna, or by consenting to the terms of the Separation Agreement (which establishes a substantial monthly spousal support payment).

d) Fundamentally, in the absence of written notice or contradictory testimony, the Court is permitted to find that the facts and figures set forth within the Form 82 have been established by the Trustee for purposes of this discharge application.

e) The Bankrupt has been provided with multiple opportunities to provide a more fulsome explanation. In addition to the Bankrupt's December 2022 Affidavit and the Bankrupt's April 2023 Affidavit, the Bankrupt provided viva voce testimony, and was examined by the OSB, which resulted in the OSB Report.

f) The Medical Report does not describe or in any way opine that the Bankrupt has or may suffer from a cognitive impairment or memory loss.

g) Upon this basis, there is certainly an argument that could be made (but was not advanced on behalf of the Trustee, or the OSB) to the effect that one may reasonably infer the Bankrupt has conveniently chosen to say he cannot remember what transpired, as opposed to explaining why he amassed such a substantial amount of credit card debt, as well as owed a sizeable sum to CRA.

h) At a minimum, the Court is of the view the Bankrupt has not demonstrated that he has committed enough time or sought out assistance as required so as to potentially better explain what occurred, and why, in connection with all or at least some of the debt that he had incurred.

i) From the Court's perspective, the relatively short period of time in which credit card expenditures and cash advances or withdrawals occurred, together with the amounts involved and inability to explain why such expenses were incurred, speaks to and is evidence of "rash" spending on the part of the Bankrupt. The pattern of conduct displayed by the Bankrupt in amassing such debt can also be seen as "hazardous", both to creditors, and to the Bankrupt who has made his first assignment in bankruptcy.

j) Despite encountering loss of work and financial difficulties due to the global pandemic, the Bankrupt nonetheless proceeded to incur a significant amount of liabilities, to the prejudice of numerous creditors.

k) In addition, one could reasonably categorize the evidence before the Court as revealing that the Bankrupt has essentially "nothing to show" for all the debt incurred.

[81] In accordance with the foregoing, I find that the Trustee has sufficiently established this particular fact pursuant to section 173(1)(e) of the ***Act***.

s.173(1)(o) – the Bankrupt has failed to perform the duties imposed upon the bankrupt pursuant to this *Act* or to comply with any order of the court.

[82] While not argued by the Trustee at the discharge hearing, it was mentioned within the Form 82 that the Bankrupt had contravened section 173(1)(o) of the ***Act***, by virtue of not acting in compliance with section 158(f) of the ***Act***, which provides as follows:

> **Duties of bankrupt**
> **158** A bankrupt shall
> ...
> (f) **make disclosure to the trustee of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event** or beginning on such other antecedent date as the court may direct, and ending on the date of the bankruptcy, both dates included, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;
> **(emphasis added)**

[83] The OSB did not make any comments in this regard, nor did counsel for the Bankrupt.

[84] The Court, however, notes the following based upon the evidence:

a) While the Bankrupt did disclose the transfer of his interest in the Brandon Home to Deanna, he did not produce a copy of the Bill of Sale or any other documentation to confirm when the Brandon Home was transferred to Deanna (to establish when it was transferred in relation to the date of bankruptcy).

c) The Bankrupt may have disclosed transfer of his interest in the Lake Properties to Deanna, but did not produce adequate disclosure (such as copies of the titles) to confirm when transfer of the Lake Properties to Deanna occurred in connection with the date of bankruptcy.

[85] In addition, the Trustee, nor the OSB, referred to sections 4.2(1) and (2) of the ***Act***, which stipulate as follows:

> **Good faith**
> **4.2 (1) Any interested person in any proceedings under this *Act*** shall act in good faith with respect to those proceedings.
>
> **Good faith — powers of court**
> **(2) If the court is satisfied that an interested person fails to act in good faith**, on application by any interested person, **the court may make any order that it considers appropriate in the circumstances.**
> **(emphasis added)**

[86] The Court is of the view that a reasonable argument could have been advanced by the Trustee and the OSB to the effect that the Bankrupt has not acted in good faith. In particular, and despite plenty of opportunity, the Bankrupt has not supplied any supporting documentation concerning transfer of the Brandon Home and the Lake Properties, nor did he offer an explanation as to why he incurred such significant debt (with the credit cards and through cash advances or withdrawals).

[87] Regardless, there has been no express denial from the Bankrupt concerning the above noted conduct on his part, nor has there been any specific response to this assertion made by the Trustee within the Form 82.

[88] In the circumstances, and while I have already determined that facts have been established in accordance with section 173(1)(a) and 173(1)(e) of the ***Act***, I am also prepared to find that a fact pursuant to section 173(1)(o) of the ***Act*** has been sufficiently established by the Trustee.

Possible preference

[89] Section 95 of the ***Act*** deserves attention, and provides as follows:

> **Preferences**
> **95 (1) A transfer of property made**, a provision of services made, a charge on property made, **a payment made, an obligation incurred** or a judicial proceeding taken or suffered **by an insolvent person**:
>
> …
>
> **(b) in favour of a creditor who is not dealing at arm's length with the insolvent person, or a person in trust for that creditor, that has the effect of giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is 12 months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.**
>
> **Preference presumed**
> **(2) If the transfer**, charge, **payment, obligation** or judicial proceeding **referred to in paragraph (1)(a) has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made, incurred, taken or suffered with a view to giving the creditor the preference** …
> **(emphasis added)**

[90] There may very well have been a preference involving Deanna and the Brandon Home, as well as the Lake Properties. Conveniently for the Bankrupt, however, due to the absence of evidence presented (evidence which could have been obtained and was expected from the Bankrupt or on his behalf), it is not known if these transfers took place within one year prior to the date of bankruptcy.

[91] As a result, a preference in favour of Deanna cannot be conclusively determined from the available evidence. In passing though, I note that it is not the obligation of the Court to secure this evidence on its own.

Potential transfer under value

[92] Section 96 of the ***Act*** must also be considered in these circumstances:

> **Transfer at undervalue**
> **96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if**
> …
>
> **(b) the party was not dealing at arm's length with the debtor and**
>
> **(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or**
> **(ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and**
>
> **(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or**
> **(B) the debtor intended to defraud, defeat or delay a creditor.**
>
> **Establishing values**
> **(2)** In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.
>
> **Meaning of person *who is privy***
> **(3)** In this section, a ***person who is privy*** **means a person who is not dealing at arm's length with a party to a transfer** and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person
> **(emphasis added)**.

[93] Even if it has not been established that a preference occurred involving Deanna, the Trustee could reasonably assert that the transfers of property by the Bankrupt in favour of Deanna were under value, provided the transfers took place within one year prior to the date of bankruptcy, or alternatively, within the period of time prescribed by section 96(1)(b)(ii) of the ***Act*** where there is evidence that the Bankrupt was insolvent or rendered insolvent due to the transfers, or was intent upon compromising the claims of creditors.

[94] The Bankrupt would no doubt argue that the above noted transfers went ahead due to his intention to satisfy any claims from Deanna in accordance with the ***FPA***. Nonetheless, any such family property claim of Deanna is unsecured, does not have priority and does not change the reality that no value was obtained which could have been accessed by other creditors.

[95] The Trustee did not, however, make an application as is required pursuant to section 96(1) of the ***Act***, nor did the OSB raise this issue. As a result, no such determination will be made in this case.

Foundation for a Conditional Discharge

[96] In accordance with the foregoing determinations that multiple facts pursuant to section 173(1) of the ***Act*** have been substantiated by the Trustee, a foundation has been established for the Court to pronounce a conditional discharge for the Bankrupt.

[97] Even if I am in error with respect to certain of my findings, only one such fact being proven pursuant to section 173(1) of the ***Act*** is sufficient to serve as a basis for granting a conditional discharge in favour of the Bankrupt.

[98] I should clarify that I do not find there to be a practical or proportionate benefit to any of the parties involved in these proceedings if the Court refused to discharge the Bankrupt.

[99] With respect to the further issue of whether a suspension would be appropriate (in addition to a conditional discharge), the quantum and term of payment to be expected of the Bankrupt (as reviewed within the balance of this decision) is such that I am not convinced this is a necessary component of the Court's disposition. In addition, a suspension of the Bankrupt's discharge has not been requested by the Trustee or the OSB.

Considerations for quantum of payment under Conditional Discharge

[100] The Trustee, the OSB and the Bankrupt have all requested that the Court pronounce a conditional discharge in these circumstances.

[101] With respect to the amount and term of the payment obligation to be imposed upon the Bankrupt as a condition of his discharge, the Trustee and the OSB (as reviewed) have simply proposed that such parameters be "determined within the discretion of the Court".

[102] As already mentioned, it has been proposed on behalf of the Bankrupt that he would pay an amount of $7,500.00 as a condition of discharge (with monthly payments of $150.00 to be made until this obligation is satisfied).

[103] Essentially, the Court has been asked to decide if the Bankrupt's proposal is satisfactory, and if not, to determine whether a much greater payment obligation would be appropriate in these circumstances.

[104] Conditional discharge orders are reviewed in detail within the ***2023-2024 Annotated Act***, with the excerpts included below providing additional guidance to the Court:

> **Section 7:117 on page 917:**
>
> Most conditional orders direct payment of a sum of money**. Generally speaking, an order for payment should only be made if, after providing for the adequate support of the bankrupt and his or her family, there is a surplus sufficient to permit payments to be made to the trustee for the benefit of creditors.**
>
> **In deciding whether or not to make a conditional order, the court should balance the rehabilitation of the bankrupt**, supported by sufficient income to provide the requirements of living for the bankrupt and his or her dependents in an appropriate manner, **against the right of creditors to receive an additional dividend from the bankrupt** *Marshall v. The Bank of Nova Scotia* (1986), 1986 CanLII 1132 (BC CA), 62 C.B.R. (N.S.) 118 (BC CA).
> **(emphasis added)**

Credit cards

[105] The following commentary is contained within the ***2023-2024 Annotated Act*** concerning excessive credit card debt:

> **Section 7:132 on page 922:**
>
> **Where a bankrupt, enjoying a substantial income, has consciously incurred substantial indebtedness on a number of credit cards in excess of or close to the credit limit on each card, he or she cannot use the bankruptcy process to relieve himself or herself of that indebtedness**: *Re Gordon* (1991), 6 C.B.R. (3d) 122 (Ont. Gen. Div.).
> **(emphasis added)**

Exempt assets

[106] The excerpts to follow from the ***2023-2024 Annotated Act*** are relevant in relation to the one exempt asset of the Bankrupt which has some value (his RRIF).

> **Section 7:129 on page 921:**
> Even though assets are exempt from seizure, they may be taken into account in deciding whether a conditional order of discharge should be made. **Where the size of the exemptions is such that it would offend most reasonable persons and diminish the integrity of the bankruptcy process, the court will likely make a conditional order*: Nelson (Trustee of) v. Nelson***, 33 C.B.R. (3d) 292, [1995] 8 W.W.R. 249, 133 Sask R. 178 (QB); ***Re Kreese*** (1997), 45 CBR (3d) 36 (Sask. Q.B.); ***Re Poettker*** (2007), 2007 CarswellAlta 1603, 38 C.B.R. 5th 259 (Alta. Q.B.).
> **(emphasis added)**

[107] In the decision of ***Bankruptcy of Edward Petz***, 2023 MBKB 20 ("***Petz***"), I noted as follows, commencing at paragraph 232:

> [232] ***Re Fredette***, (2003) 2003 MBQB 167 (CanLII), 45 Man.R. (4th) 34 ("***Fredette***") is a decision of the Honourable Registrar Ring, wherein both bankrupt spouses, described as being honest but unfortunate debtors, each had approximately $150,000.00 in unsecured debt. The spouses also had approximately $240,000.00 in RRSPs, which were determined to be exempt. Registrar Ring considered ***Nelson*** and ordered that the bankrupt spouses each pay the sum of $75,000.00 within three years (the decision was overturned on appeal, and each bankrupt spouse was required to pay $35,000.00).
>
> [233] A payment obligation coupled with the conditional discharge ordered by Registrar Ring in ***Fredette*** was aimed at preserving confidence of the public in the integrity of the bankruptcy process (which should not be discounted in these circumstances).

[108] With the transfer of his interest in the Brandon Home and the Lake Properties to Deanna, the RRIF of the Bankrupt is his only asset of significant value (apart from receipt of monthly benefits pursuant to his employment pension with Manitoba Hydro).

[109] It is of note that without factoring in any inherent income tax consequences, the Bankrupt's RRIF, as of the date of bankruptcy, was of an amount greater than the total credit card debt amassed (and is even greater than the sum owing to CRA).

[110] Upon applying the principles from decisions such as ***Nelson*** and ***Fredette*** to this case, I have no difficulty reaching the conclusion that if this Court was to impose a minimal or modest payment obligation, when the Bankrupt has a sizeable exempt asset and there has been negligible funds available for creditors to date, the integrity of the bankruptcy process would be impacted negatively.

Family property equalization claims and bankruptcy

[111] A helpful overview of the impact of the ***Act*** upon family property claims pursuant to the ***FPA*** is contained within the following portions of the ***2023-2024 Annotated Act***:

> **Section 5:6 on page 341:**
> Family law's objective is to provide for the equitable division of property on the breakdown of marital or common-law relationships as well as to specify obligations in respect of financial support.
> …
>
> Provincial and territorial governments have adopted 2 primary approaches to family property division, equalization schemes and division of property schemes, with a number of differences in the statutory language among these approaches. These differences have different implications for treatment in bankruptcy.
>
> Ontario, Manitoba, Prince Edward Island (P.E.I.), the Northwest Territories (N.W.T.) and Nunavut can be classified as equalization jurisdictions in terms of the approach under family law to division of property, essentially granting each spouse or right to equal division of the net value of the family assets comprised of the property accumulated

> during the marriage, with the division made after a process of accounting and valuation.
> …
> **If the bankrupt spouse opposed the equalization payment, and no court order or agreement has been made granting a proprietary writer security, the bankrupt's property vests in the trustee, and the payee spouse, usually the wife, ranks as an unsecured creditor and is given no higher priority to a claim for the value of the bankrupt's half of the family property than any other secured creditor: *Schreyer v. Schreyer*,** 2011 CarswellMan 334, 2011 CarswellMan 335, [2011] 2 S.C.R. (5th) 605, 78 C.B.R. (5th) 1 (S.C.C.)
> **(emphasis granted)**

Summary of critical evidence

[112] For purposes of formulating a decision concerning the quantum of payment that should be required of the Bankrupt, I have considered the following circumstances (as already reviewed herein, certain of these grounds are also relied upon by the Trustee, and the OSB, in support of their respective positions):

a) The Bankrupt has failed to provide an explanation as to why substantial credit card debt (including significant cash advances or withdrawals) was incurred over a relatively short period of time leading up to the date of bankruptcy.

b) Instead, the Bankrupt has made statements to the effect that "it is a blur" when asked about his credit card debt and the cash advances or withdrawals.

c) It is recognized that the Bankrupt is in his 70's, and while the Medical Report outlined the health difficulties encountered by the Bankrupt, there is no independent medical evidence before the Court to suggest

that the Bankrupt has a cognitive issue or memory deficit that is or may be contributing towards an inability to more fully explain why the credit card debt was amassed (with significant cash advances or withdrawals).

d) In the circumstances, the lack of explanation from the Bankrupt could be reasonably inferred to represent an effort on the part of the Bankrupt to evade responsibility and limit questions in this regard.

e) The reality here is that the Bankrupt amassed a substantial amount of debt, and has nothing to show for these expenditures, such as purchase of a new vehicle or something of more significant value.

f) Aside from the Bankrupt's vague explanation regarding the debt amassed, and why it was incurred over a relatively short period of time, it is quite frustrating from the Court's standpoint that the relevant title searches for the Lake Properties were not provided, especially when this was one of the reasons why a second hearing date was scheduled (so that this evidence would be available).

g) Title searches at the Property Registry (Land Titles) could have been completed online by counsel for the Bankrupt (or by a Manitoba solicitor as agent). Alternatively, the Bankrupt could have attended in person to request and obtain copies of the titles for the Lake Properties.

h) As a result, the Bankrupt has still not conclusively established that 517 Colquhoun was jointly owned with his brother.

i) In addition, a search of title and obtaining a copy of the transfers of land that were registered would have confirmed what was stated to be the fair market value at the time when the Lake Properties were transferred to Deanna.

j) No copy of the Bill of Sale from the initial purchase of the Brandon Home was provided, nor was there any evidence produced by the Bankrupt with respect to whether there was an assignment of lease (with valuation details relevant to the date of transfer), or what was the purchase price when Deanna subsequently sold the Brandon Home.

k) Aside from the above noted details, the Bankrupt could have obtained an opinion as to value for the Brandon Home, and for the Lake Properties, insofar as around the time of transfer to Deanna (presumably at minimal cost and time to the Bankrupt).

l) Other than indicating that Deanna did not hold employment outside of the home, and confirming that the Bankrupt had annual income of approximately $92,000.00 on or around the time of finalizing the Separation Agreement, no financial disclosure was shared with respect to Deanna's circumstances so as to better explain the basis

for her receipt of spousal support in an amount of $3,500.00 monthly from the Bankrupt.

m) While counsel for the Bankrupt made reference to the SSAG's, no calculations were entered into evidence on behalf of the Bankrupt (in an effort to justify why or on what basis the Bankrupt consented to such a significant monthly spousal support obligation in favour of Deanna).

n) With use of recognized and reliable calculation software for the SSAG's, and if no income is included for Deanna, with the gross annual income of the Bankrupt set at $92,000.00 (based upon what he had disclosed as of on or around the date of bankruptcy), monthly spousal support in an amount of $3,500.00 is within the range recommended. If, however, the calculations are amended to recognize that Deanna should be in receipt of monthly OAS benefits, at a minimum, and the Bankrupt's gross annual income is adjusted to $72,000.00 (which is consistent with his most recent reported gross monthly income from his pension with Manitoba Hydro, and from CPP and OAS, all of which totals approximately $6,000.00 monthly), the midpoint within recommended range for monthly spousal support is over $1,000.00 less than what the Bankrupt is presently paying to Deanna. It is further acknowledged though that should Scott be

considered to be a dependent of Deanna, or of both Deanna and the Bankrupt, there figures would presumably be impacted.

o) There was also no disclosure provided by the Bankrupt as to the extent of Deanna's assets and liabilities as of on or around the date of the parties' separation, so as to better explain and justify the property transfers completed by the Bankrupt.

p) In addition, no ***FPA*** calculations were submitted into evidence by the Bankrupt to substantiate the necessity for transfer of the Brandon Home and the Lake Properties to Deanna.

q) If transfer of the Bankrupt's interest in the Brandon Home and the Lake Properties was in lieu of the Bankrupt being able to maintain his employment pension from Manitoba Hydro, and his RRIF, free from any claim for division by Deanna, this was not confirmed or explained to be the case within the evidence before the Court.

r) While the available evidence does not confirm if there was a preference committed when the Bankrupt transferred the Brandon Home and the Lake Properties to Deanna prior to making an assignment in bankruptcy, there may have been a transfer under value (although no application was made by the Trustee to request such a declaration by the Court).

s) Regardless, the claim of a spouse to a property equalization payment is an unsecured claim, without priority, which does not survive bankruptcy.

t) The extent of realizable assets of the Bankrupt is nominal, and the suggestion of the Bankrupt that he pay the sum of $7,500.00 as a condition of discharge, when having an exempt asset such as the RRIF (valued at approximately $166,000.00), could be viewed as repugnant.

u) There was no evidence presented to confirm, subsequent to the parties entering into a Separation Agreement, that a Petition for Divorce has been filed.

v) The Trustee and the OSB did not suggest to the Bankrupt that he is using the Separation Agreement as an end around to minimize his exposure to claims from creditors through bankruptcy (relying upon the transfers of property and spousal support payable to Deanna). A foundation for this line of inquiry exists in the evidence before the Court, as the Bankrupt was previously involved with what was later discovered to be a CRA tax avoidance scam. Nonetheless, more disclosure from the Bankrupt could have been made available to minimize the prospect for any such speculation or allegations.

w) It was clearly set forth within the Bankrupt's December 2022 Affidavit that he had no dependents, and yet now, the Bankrupt has taken the

position that he incurs considerable time and expense travelling to spend time with and assist Deanna insofar as care of their son, Scott. No independent medical evidence was presented concerning Scott's present condition or care requirements.

x) There was also no evidence provided in connection with whether Scott qualifies for and receives disability benefits.

y) A further contradiction or uncertainty arises from the Bankrupt's claim that he regularly travels to Brandon to spend time with Scott, as he had indicated that the Lake Properties were transferred to Deanna so that she would have a place there to care for Scott. At times when Deanna is with Scott at the Lake Properties, the Bankrupt does not need to travel an hour and a half one way, with his current residence located nearby, within the Rural Municipality of Deloraine-Winchester.

z) Ultimately the Bankrupt was well aware of his financial difficulties, with onset of the Covid-19 global pandemic and corresponding loss of work, but he continued nonetheless to incur more and more credit card debt.

[113] Even with the rather substantial sum outstanding in favour of CRA as of the date of bankruptcy, the Trustee has confirmed that this is not a high income tax debt situation pursuant to section 172.1 of the ***Act***.

Potential payment obligation under Conditional Discharge

[114] For purposes of determining the Bankrupt's payment obligation should a conditional discharge be pronounced in this case, the Court has to be mindful that there is a balancing of interests to be achieved (rehabilitation of the Bankrupt and relieving him of a heavy debt burden, the interests of creditors in obtaining some measure of reasonable recovery, and finally, the integrity of the bankruptcy system).

[115] On a conservative basis, which is of benefit to the Bankrupt, and if the mid-point between is utilized between the Bankrupt's position on value of $30,000.00 for each of the Lake Properties, and an amount of $60,000.00 (the approximate amount for which both 515 Colquhoun and 517 Colquhoun have been assessed for tax purposes), the result is a value for each property of $45,000.00.

[116] In addition, and should these calculations be based upon the Bankrupt being recognized as being a joint owner of 515 Colquhoun with his brother, the outcome is a value attributable to the Bankrupt for the Lake Properties in an amount of $67,500.00.

[117] In order to sell the Lake Properties to realize upon the Bankrupt's interest (had the Bankrupt not transferred the two titles to Deanna), and should a realtor be involved, one could reasonably presume that a standard commission of 5% would apply, resulting in an expense of $3,375.00, plus GST of $168.75, for a total of $3,543.75.

[118] Legal fees and disbursements would have been necessary in order to transfer the Lake Properties to Deanna (or for sale to an arms-length third party), and once could reasonably expect to pay an amount of $1,000.00, inclusive of disbursements, GST and RST, for a standard residential sale. While the parcels are not of substantial value, there are two separate titles, and the same work is required regardless of the value of the properties.

[119] There are often other required adjustments, such as for taxes and utilities, and if for calculation purposes a further sum of $1,000.00 was contemplated in this regard, the result would be that net proceeds in an amount of approximately $62,000.00 should have been reasonably available.

[120] In the event Deanna was to share equally in the value of the Bankrupt's interest in the Lake Properties (without being aware of the shareable value of Deanna’s assets, if any, to which the Bankrupt would have an interest), the final result is that the Bankrupt should have had entitlement to an amount of $31,000.00, at a minimum, had the Lake Properties not been transferred to Deanna prior to the date of bankruptcy, and instead were sold to a willing purchaser at fair market value.

[121] As to the Brandon Home, the Bankrupt confirmed that it was purchased approximately 20 years ago, for a purchase price of $150,000.00. If the Brandon Home was valued conservatively, and the sum of $150,000.00 was used (no appreciation, and yet, no depreciation), the commission payable should the

property be sold for this price through a realtor would amount to $7,850.00 (5% equals $7,500.00, plus GST of $375.00).

[122] If legal fees and disbursements, plus GST and RST, associated with sale of the Brandon Home were reasonably anticipated to be in an amount of $1,000.00 all inclusive, and there were other adjustments, of a maximum amount of $1,000.00 (for items such as lot rent, taxes or utilities), the outcome would be net sale proceeds of approximately $140,000.00, to which the Bankrupt would be entitled to one half, or $70,000.00.

[123] Subject of course to reasonable expenses of the Trustee, and any other contingencies, one can nonetheless calculate generally that an amount of approximately $100,000.00 (in the neighborhood of $70,000.00 from the Brandon Home and around $30,000.00 from the Lake Properties) could have been available for all unsecured creditors had the Bankrupt not proceeded to unilaterally transfer his interest in the Brandon Home and the Lake Properties to Deanna, for $1.00 (when she herself was an unsecured creditor). As expressed earlier, these figures have been arrived upon cautiously, and the actual value of the interest transferred by the Bankrupt prior to the date of bankruptcy could very well have been greater.

[124] The reality here is that the Bankrupt incurred credit card expenditures of approximately $159,000.00 (including cash advances or withdrawals of approximately $75,000.00), by virtue of having eight separate credit cards. In addition, the Bankrupt was indebted to CRA in an amount of over $128,000.00

as of the date of bankruptcy, all while having limited assets for recovery, and an exempt RRIF of substantial value (along with his employment pension accrued over a forty year career with Manitoba Hydro).

[125] Despite his inability to offer an explanation as to why substantial credit card debt (including cash advances or withdrawals) was incurred so quickly, and providing limited details surrounding the Separation Agreement, as well as transfer of the Brandon Home and the Lake Properties (depriving creditors of assets against which there could be recovery), the Trustee and the OSB did not fully explore the issue of whether the Bankrupt should be viewed as an honest but unfortunate debtor.

[126] When considering the totality of evidence in this case, however, and the circumstances of concern to the Court summarized at paragraph 112 herein, I find that the Bankrupt should not be rewarded for the incomplete disclosure and vague explanations provided to the Trustee.

[127] Ultimately, it is my determination that a disposition incorporating a more substantial payment obligation is necessary for purposes of deterrence and denunciation.

[128] A message must be clearly delivered by this case, as there can be absolutely no perception fostered that a bankrupt can benefit from relief under bankruptcy legislation, when neglecting or failing to meet reasonably required duties. Maintaining public confidence in proceedings of this nature is vital.

[129] I am mindful that affordability to the Bankrupt should not take precedence over the other objectives to be achieved in this case. That being stated, I have some pause and concern about the utility of imposing a payment obligation of an amount which will most likely prompt immediate review and the potential for alternate payment arrangements, which is exactly what transpired in the Manitoba case of ***Bankruptcy of Janos Kresz, also known as John Kresz***, 2007 MBQB 67 ("***Kresz***").

[130] As part and parcel of the analysis process, it cannot be ignored that the Bankrupt is in his mid-70's, and suffering from a number of health issues. He is retired, and in receipt of monthly employment pension benefits, as well as CPP and OAS.

Conclusion for quantum of payment

[131] I have considered the evidence and submissions, as well as the principles reviewed from the ***2023 Annotated Act***, and from decisions such as ***Avramenko***, ***Martino***, ***Munro*** and ***Kurtz***.

[132] At the end of the day, I am not impressed with the Bankrupt's conduct, who proceeded to incur substantial credit card debt, including cash advances or withdrawals of $75,000.00, over a short time frame (without solid explanation), while transferring his interest in the Brandon Home and the Lake Properties to Deanna (depriving the Trustee from assets that could have served as a means for some recovery by unsecured creditors), all the while having an exempt RRIF

that is not of insignificant value (and also having an employment pension that provides the Bankrupt with regular monthly income).

[133] Based upon the foregoing, it is my determination and I hereby order that the Bankrupt shall be discharged, conditional upon payment in an amount of $95,000.00 in favour of the Trustee (for the Bankrupt's estate).

Terms of payment

[134] While it could very well take a considerable period of time for the Bankrupt to satisfy the payment obligation that I have imposed, there should nonetheless be a minimum monthly payment required of the Bankrupt.

[135] The monthly pension income of the Husband is not insignificant (employment pension from Manitoba Hydro as well as CPP and OAS), and there is no evidence that the Bankrupt has had to draw upon his RRIF anymore than what would be required at law given his age. In addition, the Bankrupt could pursue a variation of his present spousal support obligation.

[136] Accordingly, I am ordering that the Bankrupt shall pay a minimum monthly amount of $500.00 to the Trustee, payable upon the first of the day of each month, commencing effective May 1, 2024, and continuing each month thereafter until the Bankrupt's payment obligation under the conditional discharge has been fully satisfied.

[137] The Bankrupt shall also comply with ***the Income Tax Act***, R.S.C., 1985, c. 1 (5th Supp.)(the "***ITA***"), which shall include but not be limited to filing his personal income tax return on or before the deadline each year, and to promptly

pay any sum owing to CRA, if applicable, with there to be an assignment of the Bankrupt's income tax refunds and any other credits in favour of the Trustee (which shall become effective immediately, and remain in place until such time as the Bankrupt has made all required payments in full).

[138] With respect to the length of this conditional discharge order, I refer to the following excerpt from Section 7:122 on page 920 of the ***2023-2024 Annotated Act***:

> Generally speaking, three years is regarded as an acceptable period of time for a bankrupt to be burdened with a conditional order; a longer-term should only be imposed in exceptional circumstances *Re Thompson* (1991), 1991 CanLII 2085 (BC SC), 8 CBR (3rd) 1 (BCSC) (other cases cited have not been listed).

[139] There is also mention of the decision in ***Stoski Estate (Trustee of) v. Royal Bank***, 2009 MBQB 17, 2009 CarswellMan 30, 51 C.B.R. (5th) 40 (MBQB) ("***Stoski***") within Section 7:104 at page 908 of the ***2023-2024 Annotated Act***, where it states as follows:

> …
> The court ordered payment in the amount of $150,000, recognizing her particular circumstances, and the payments to be made over a longer period of time than is normally acceptable, specifically, six years.

[140] While establishing a term or duration for the conditional discharge of the Bankrupt would be appropriate, I recognize that it may need to be of a greater duration than contemplated within the above noted authorities.

[141] A remedy exists for the Court to revisit and enforce a conditional discharge order, as discussed at Section 7:125 on page 920 of the ***2023-2024 Annotated Act***:

> Where the bankrupt fails to comply the terms of a conditional order, the remedy is to bring an application under s.187(5) to rescind the order. This matter is discussed in 8:37 to 8:44 "Power of Court to Review, Rescind or Vary an Order - (7) Varying or Rescinding Orders Discharging Bankrupts".

[142] The Bankrupt also has a review option (as exercised in ***Kresz***), which is summarized within Section 7:143 on page 933 of the ***2023-2024 Annotated Act***:

> If, at any time after the expiration of one year from the date of the making of a conditional order of discharge, the bankrupt satisfies the court that there is no reasonable probability of his or her being in a position comply with the terms of the order, the court may modify the terms of the order in such manner and upon such conditions as it may think fit: s.172(3).

[143] In view of the foregoing, I have decided to stipulate that the Bankrupt shall have a period of seven years (May 1, 2024 until April 30, 2031) in which to satisfy the payment obligation hereunder. I appreciate that even if the required monthly payments are made, and the income tax refunds of the Bankrupt, if any, are to be assigned to the Trustee, there will presumably still be a balance owing, which the Bankrupt will have to satisfy on a lump sum basis prior to or immediately at the end of the seven year term of this conditional discharge.

CONCLUSION

[144] The Bankrupt shall be discharged, conditional upon payment in an amount of $95,000.00 to the Trustee (for the estate of the Bankrupt), with the Bankrupt to be bound by and comply fully with the following additional terms:

a) The Bankrupt shall pay a minimum monthly amount of $500.00 to the Trustee (for the Bankrupt's estate), payable upon the first of the day of

each month, commencing effective May 1, 2024, and continuing each month thereafter until the Bankrupt's payment obligation under the conditional discharge has been fully satisfied; and

b) The Bankrupt shall comply with the ***ITA***, which shall include but not be limited to filing his personal income tax return on or before the stipulated deadline annually, and promptly paying any sum owing to CRA, if applicable, with there to be an assignment of the Bankrupt's income tax refunds and any other credits in favour of the Trustee, effective immediately, which shall remain in place until such time as the Bankrupt has fully satisfied his payment obligation in accordance with the conditional discharge.

COSTS

[145] No request for costs was made by the Trustee, or the OSB. In the event, however, that costs are being sought, a further brief hearing may be scheduled before me, provided the Trial Coordinator is contacted to make arrangements no later than sixty days from the date of this decision.

R.L. Patterson
Registrar