KEN ROWAN & ASSOCIATES INC.
Licensed Insolvency Trustee

DebtsGO

By email:
IC.osbregulatoryaffairs-affairesreglementairesbsf.ic@canada.ca

June 10, 2021

Ms. Elizabeth Lang
Superintendent of Bankruptcy
4th Floor, 155 Queen St.
Ottawa, ON

Re: Consultation regarding Directives, Rules and Forms

Thank you for inviting comments on this matter.

I do not prefer to remain anonymous; I was licensed as a bankruptcy trustee in 1983 and since 1999 my practice has concentrated on consumer insolvencies. I was a Chartered Accountant / Chartered Professional Accountant from 1980 until my resignation in 2020.

Kindly consider the following matters.

The Need for Inspectors in Bankruptcy Administrations:

I believe that increased creditor involvement would reduce most concerns regarding asset valuation and realization and the proper determination of the requirement to pay surplus income pursuant to section 68.

Regarding assets, LITs have great leeway in establishing fair market value and in realizing on assets sold back to the bankrupt. Although disclosure of assets and their method of valuation could be improved in Forms 12, 13, 14, 78, 79, and 82, to have a more independent review of assets through inspector involvement would provide much greater assurance that assets have been fully disclosed, fairly valued and adequately realized.

The LIT's obligation to establish the bankrupt's requirement to pay surplus income pursuant to section 68 extends beyond simply following the formula in Directive 11R2. The LIT is required to consider the bankrupt's personal circumstances, requiring a deeper analysis such as that referred to in Re Plamondon 2012 ONSC 1379. I believe that for the most part LITs do not adequately consider these personal circumstances or simply wave them off. An estate inspector would, as a minimum, provide another viewpoint.

I recognize an inspector appointment may require the LIT to follow many provisions of the BIA in a summary administration bankruptcy that would otherwise be unnecessary. However the checks and balances an inspector provides in the insolvency process are invaluable.

My recommendation: allow a fair payment for inspector services and encourage their appointment in all bankruptcies. In Rule 135, replace paragraphs (a) through (d) with "$100". Amend Forms 68, 69, and 70 by adding a phrase that "The insolvency process invites and encourages the appointment of estate inspectors who may nominate themselves by contacting the LIT."

Suite 210, 2411-160 Street, Surrey BC V3Z 0C8 **T: 604 531-4186** F: 1-877-531-8096 DebtsGO.com

Lengthy Discharges:

With the introduction of BIA 172.1 LITs have found themselves administering bankruptcies of durations that appear to vary greatly based not only on the individual circumstances of the bankrupt but also on the province where the assignment was filed. There is an appearance the courts may have been inconsistent in the application of BIA s. 172.1. And should this be confirmed, the question remains as to which province(s) has gotten it right.

My longest CRA-opposed conditional order of discharge is a waitress ordered to pay $300 monthly for over 22 years. I know one other LIT administering a bankruptcy estate where the bankrupt faces a lengthier term.

The effect of prolonged discharges is that tax debtors may not be able to avail themselves of the bankruptcy process because LITs will refuse to file their assignments, more estate conversions will occur, bankrupts will face potentially punitive orders, and debtors will seek out their province of choice for making an assignment even if that requires their relocation.

If lengthy conditional orders are to continue then the LIT also needs to be compensated for the delay in administering a summary administration file for a prolonged period.

My recommendations:

- introduce the following paragraph after BIA rule 128(1)(c) "(d) where a conditional order of discharge has been made pursuant to section 172.1 of the Act, the sum of $1,000 for every 12 month period after the date of that order until the trustee is discharged";
- introduce the following paragraph after BIA rule 128(3)(c) "(d) the amount, if any, referred to in paragraph (d) of subsection 128(1)"; and
- a review be undertaken to determine whether maximum terms of discharge should be introduced to the BIA.

Form 48

The number of consumer proposal filings now greatly outpaces assignments. The logic for this is clear – the risks to the LIT are lower, the yield is higher, the work is less, the files are thinner, and a less experienced level of staffing is required to administer them.

It is to be expected that certain consumer debtor practices will refuse to file assignments, and some LITs will concentrate on consumer proposals only.

There is now a fear of creditor complacency. Form 48, Report of Administrator on Consumer Proposal, lacks the essentials a creditor needs to make an informed decision as to whether to vote "for" or "against" a consumer proposal. Granted, several in-practice adjustments have arisen in response and LITs have expanded the basic contents of their reports which will almost always reveal the expected return from the consumer proposal exceeds the expected return from a bankruptcy filing. Perhaps that is enough to generate a "for" response from creditors.

My recommendations: Creditors need more information to determine how to respond to a consumer proposal and I recommend Form 48 be amended to disclose:

- whether the LIT has sourced the file from an intermediary set out in Directive 1R6;
- the method followed to determine the number of persons in the family unit;
- how the LIT has confirmed the income of the debtor and others in the family unit and how that income is or has been variable;
- how the LIT has calculated the debtor's requirement to pay surplus income if the debtor was instead bankrupt;
- the debtor's prospects;
- how the LIT determined the fair market value of the assets disclosed by the debtor in their statement of affairs; and
- the financial uncertainties creditors face if a consumer proposal has been accepted.

I also recommend a new form be developed and be sent to creditors with Form 50 and that such form be a template for creditors to ask any questions of the LIT.

Service

I recommend creditors be given the option of how they would like the LIT to serve them with any notices, whether by mail, fax, or email, and that their choice be made on Form 31. This will require a small amendment to BIA Rule 6(1).

Sincerely,

Ken A. Rowan, LIT