

CANADA / JUDGMENT

Re: Steven Edward Jefferson

2004 BCSC 144

COURT

Supreme Court of British Columbia

DECIDED

4 February 2004

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2004 BCSC 144 Re: Steven Edward Jefferson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Re: Steven Edward Jefferson

2004 BCSC 144

Date: 20040204

Docket: 233477

Registry: Prince George

IN BANKRUPTCY

In the Matter of the Bankruptcy of

Steven Edward Jefferson

Before: Master Baker

Decision as Registrar

in Bankruptcy

Counsel for the bankrupt:

G. Wright

appearing December 9, 2003

Counsel for Deborah Larsen, a creditor:

D. McGaughey

Appearing for KPMG, the Trustee:

C.C. Wikjord

Date and Place of Hearing:

September 30 and

December 9, 2003

Prince George, B.C.

ISSUE

- [1] Mr. Jefferson, the bankrupt, applies for his discharge pursuant to s. 172 of the Bankruptcy and Insolvency Act (R.S.C. 1985 c. B-3) ("the Act"). The Trustee does not object to the discharge, but Mr. Jefferson's previous wife, Ms. Larsen, does. She is a creditor by virtue of orders made by Parrett J. in divorce proceedings concluded with reasons given January 30, 2002 (Jefferson v. Jefferson 2002 BCSC 151).

BACKGROUND

- [2] Mr. Jefferson made this, his first, assignment into bankruptcy on November 20, 2002. Creditors' meetings were held on January 23, 2003 and February 24, 2003. The first meeting conducted some very basic items of business and adjourned so that Mr. McGaughey, counsel for Ms. Larsen, could attend. At the second meeting Mr. McGaughey directed numerous questions to the bankrupt about his and his company's financial affairs. Ms. Grochowich, a representative of the Canada Customs and Revenue Agency ("CCRA"), was appointed Inspector of Mr. Jefferson's estate. Ms. Grochowich subsequently met, as Inspector, with the Trustee June 18th and September 26th and addressed various issues raised by Ms. Larsen.
- [3] Mr. Jefferson's debts were proved at \$98,101.91 secured and \$51,262.69 unsecured, of which Ms. Larsen's debt is \$39,693.00.
- [4] As the principal issues on the discharge were raised and argued by Ms. Larsen's counsel, it would be best to summarize those concerns and allegations. Ms. Larsen's notice of opposition cites the generally pro forma grounds from s. 173(1) of the Act (para. 35, below). As an overview, however, Mr. McGaughey challenged both Mr. Jefferson's credibility and the degree (or lack of it) of disclosure and more specifically alleged that:
- Mr. Jefferson misrepresented the reason or triggering event for his bankruptcy;
 - Mr. Jefferson has misrepresented his income during bankruptcy;
 - Mr. Jefferson's residential property was sold during bankruptcy in suspicious circumstances;
 - No realistic value has been attached to Mr. Jefferson's shareholding in J.W. Hydraulics Ltd. or its successor proprietorship, J.W. Hydraulics;

- The circumstances surrounding the purchase of some or all of the assets of J.W. Hydraulics by Mr. Earl Giesbrecht, an acquaintance of Mr. Jefferson, are suspicious and likely for less than fair market value;
- The payment of certain obligations or debts during bankruptcy is either unexplained or suspicious;
- Mr. Jefferson has had the use of his common law wife's credit cards;
- Two RRSPs were redeemed without proper explanation and on the eve of bankruptcy and;
- Mr. Jefferson has access to hidden funds.

ANALYSIS

[5] Credibility and disclosure. I will address credibility and disclosure first. The reasons of Parrett J. in Mr. Jefferson's divorce proceedings (Exhibit 1, Tab 2) make it absolutely clear that, in those proceedings and at various junctures, Mr. Jefferson simply was not believed by the court. Mr. Justice Parrett either questioned or directly and specifically rejected Mr. Jefferson's evidence at trial of numerous issues:

- the purchase of his home (para. 18(a));
- the funding source of his RRSPs (para. 18(c));
- the involvement of J.W. Hydraulics Ltd. with his racing team (para. 18(d));
- further doubt regarding the racing team (para. 18(f));
- a conclusion that he was non-responsive in general and perhaps deliberately evasive (para. 18(g));
- prevarication in respect of the purchase of a motor home (para. 19)
- financial involvement with his first wife (para. 22);
- contradiction respecting a media report about his racing team (para. 23).

Mr. Justice Parrett summarized his views of Mr. Jefferson's credibility as follows:

[28] With regret, I have concluded that Mr. Jefferson's evidence in so far as it relates to assets, their values and his financial affairs, is inaccurate and unreliable. He was either unable or unwilling to provide accurate information and answers concerning his financial affairs and in a number of instances was prepared to misrepresent his situation in order to advance what he felt was in his best interest.

- [29] The key example of this can be found in his evidence about the current status of J.W. Hydraulics Ltd. At the close of the day on the first day of his evidence he testified that the company's business would no longer support his modest salary and he felt he had no choice but to cease operations. He went on to testify that he considered himself unemployed and searching for employment.
- [30] During the course of his cross-examination, it turned out that his search for employment had so far consisted of reading the classified ads, that he had taken no steps to cease operations or liquidate assets, that he hadn't approached a single potential employer, that the company still had both a telephone and a business licence, and that he had not notified the bank or any trade accounts of his intention to cease operations. In the end he agreed that he had not taken a single step towards ceasing operations.

I quote these extracts at length because they relate to issues and matters respecting assets, income, or debts that were also before the court in these bankruptcy proceedings. Clearly, the fact that a witness or litigant has been found unbelievable in one proceeding does not establish or decide his or her credibility in subsequent proceedings. He or she may, for example, have "learned a lesson" and decided to tell the whole truth in later proceedings. I therefore approach Mr. Jefferson's credibility anew, but am not convinced that Mr. Jefferson has learned from his previous court experience. I will refer to his credibility as it arises in respect to various of the above concerns.

- [6] The close kin to credibility is, of course, disclosure. Again, I am dissatisfied with the disclosure made by Mr. Jefferson in his bankruptcy to date. Once more, I will address that aspect as the individual issues are discussed.
- [7] Reasons for Bankruptcy. Generally, Mr. Jefferson would have us believe that his bankruptcy was the inevitable result of business difficulties. I do not accept that. In response to one of the first questions from Mr. McGaughey, Mr. Jefferson admitted that the bankruptcy was triggered by Ms. Larsen's award of costs against him. He later attempted to attribute his reasons to other causes, but it is clear to me that the certificate of costs awarded October 1, 2002 (for \$17,452.89), proximate as it was to his assignment, together with his unguarded response on the stand, establish that it was this award that persuaded Mr. Jefferson to go bankrupt. This is further corroborated by Exhibit 6, Tab 7, a letter of November 13 (approximately one week prior to the assignment). This letter, from a lawyer (Mr. Tyo), is in response to Mr. Jefferson's query as to whether or not Ms. Larsen's judgment would survive his bankruptcy. There is, in my view, no other significant financial event or trend that would explain or justify the assignment. Moreover, it is significant that Ms. Larsen's debt constitutes about 77% of Mr. Jefferson's unsecured debts. It is also interesting to note that, while blaming the company's fortunes for his bankruptcy, Mr. Jefferson did not choose to place the company in bankruptcy, but chose personal bankruptcy instead.

- [8] Income During Bankruptcy. It is very difficult to accurately or reliably assess Mr. Jefferson's income during bankruptcy. His income for over 10 years has been derived from his company, J.W. Hydraulics Ltd. and its successor proprietorship, J.W. Hydraulics. Parrett J. concluded that this income is formed in part by salary and in part by personal expenses paid or reimbursed by the company. He concluded Mr. Jefferson's income, as at January 2002, to be \$57,828.00. It must have been clear to anyone of Mr. Jefferson's obvious intelligence that that conclusion, preceding the bankruptcy by only 10 months, set a clear benchmark and reference point. Mr. Jefferson did not lead evidence that would seriously contradict that conclusion. In fact, as described below, he did not really lead any significant evidence to corroborate recent or current income.
- [9] To begin - Mr. Jefferson concluded that J.W. Hydraulics Ltd. could not economically continue and therefore "on the advice of the Trustee" he "wound it up", carrying on as a proprietorship after March 2003. The "winding up" was not formally undertaken; the business simply ceased to function as J.W. Hydraulics Ltd. and its assets, again without formality, were rolled into the proprietorship. He claimed in evidence that the company could not meet its loan obligations, but I do not accept that. What reliable evidence there is demonstrates that the company had been making these loan payments for a considerable time before ceasing operations. There is no objective and reliable evidence that they had become overwhelming or insuperable.
- [10] More to the point, Mr. Jefferson simply did not produce financial statements, even in a draft form, for the company at cessation of business. He said in evidence that he could not gain access to the computer records, despite the fact that he was obviously adept and well informed about the computerized bookkeeping process. He said that the computer simply "gave me error messages" and refused access. He made no further attempts to have the problem remedied or to retrieve the computer records.
- [11] He was therefore asked (for example on October 3, 2003 in a letter from Mr. McGaughey) for the source records for the company, such as receipts or invoices. His response was that these, too, were inaccessible. They had been in a box in the basement of his residence, he said, and that they were either discarded or misplaced during spring cleaning. The other boxes (some 18, approximately), were, it seems, still in the basement. Only the financial records went missing.
- [12] He was no better able to produce reliable or proper financial records for the proprietorship. He produced only a minimalist general ledger summary (Exhibit 6, Tab 17) for part of 2003, which indicated "prior year balance" for \$0.00 for accounts payable, accounts receivable, and wages payable.
- [13] There is another means by which income (and expenses) can be assessed, and that is the sworn budget information typically required of bankrupts by their Trustees. Briefly put, the bankrupt is required to report income and expenses, in summary form, and to swear to the accuracy of the information. Mr. Jefferson submitted these reports regularly. The

Superintendent of Bankruptcy and Insolvency has set standards for family financial needs, which standards are then used to calculate surplus income for the family, a portion of which must be remitted to the Trustee during bankruptcy. For that reason Mr. Jefferson is obliged to report the income for both himself and Ms. Middleton, his new partner. That income is reported by him as -

MONTH

MR. JEFFERSON

MS. MIDDLETON

November 2002

\$ 0.00

\$ 0.00

December

0.00

2,485.25

January 2003

0.00

2,021.72

February

0.00

1,835.49

March

0.00

1,844.64

April

662.53

1,270.98

May

525.22

1,794.45

June

1,132.96

802.40

July

2,553.15

184.47

August

2,314.82

195.86

September**

2,837.40

79.93

October

2,955.90

0.00

**It is difficult to understand or interpret Mr. Jefferson's reported income in September; his budget sheet titled "September 2003" states the above amounts. On September 16, however, he swore another budget sheet (with no indication as to which month it referred to), stating an income for him of \$1,565.00 and for Ms. Middleton of \$1,548.00. These sums do not reconcile with either his September budget sheet or his August sheet. It should also be noted that, while the form and process requires disclosure of Ms. Middleton's income, Mr. Jefferson's sworn budget sheets consistently refer to the amount as "girlfriend's contribution"; he did not enlarge upon or explain whether or not these numbers actually reflect Ms. Middleton's income, as required.

[14] Mr. Jefferson's budget information therefore reflects an interesting inverse relationship between his and Ms. Middleton's income/contribution; as his increased, hers decreased. Again, he gave no explanation, other than the most general view, as to why his income was non-existent for several months after the bankruptcy or why Ms. Middleton's income/contribution latterly dropped so significantly. It is also interesting that, despite this income pattern (and particularly respecting Ms. Middleton's lowered income) Ms. Middleton was able to purchase Mr. Jefferson's residence on May 23, 2003 for \$125,000.00.

[15] Not surprisingly, perhaps, Mr. Jefferson produced no corroboration of these income amounts. He confirmed in evidence that the minimal financial information for his business (i.e. Tab 17, Exhibit 6, a computer printout of JW Hydraulic's accounts receivable, accounts payable, and wages payable ledgers) does not reconcile with his income reported in his budget sheets. His "Wages Payable" ledger, for example, has these entries:

Month Number

Debit Amount

5

1,500.00

6

1,200.00

7

800.00

8

2,700.00

9

200.00

Clearly neither these sums nor this pattern correspond to Mr. Jefferson's income.

[16] It is also clear from the evidence that, historically, J.W. Hydraulics Ltd. has paid Mr. Jefferson's Visa credit card balances, as well as residential utility and transportation (including repairs, insurance, and fuel) costs. Some, if not all, of these would be attributed to Mr. Jefferson as income. The lack of proper financial statements for the business makes detailed analysis and conclusion impossible.

[17] Notwithstanding the paucity of financial information, Mr. McGaughey has attempted to estimate Mr. Jefferson's income by reference to the bank account of J.W. Hydraulics Ltd. for the 10 months preceding the assignment (Exhibit 6, Tab 10). These statements confirm credit/deposits to the company of \$140,391.23. Extrapolating this 10-month total to 12 months indicates annual revenues of \$168,469.48. Interestingly, the last available financial statements of the company, for 2001 (Exhibit 1, Tab 11) reported revenue of \$164,044.00. The income of the company immediately prior to the bankruptcy seemed, therefore, very similar to the period scrutinized by Parrett J. in Mr. Jefferson's divorce proceedings, suggesting therefore that his personal income, tied as closely as it was and is to the company's fortunes, would also be very similar and therefore in the range of \$56,000.00 to \$58,000.00.

- [18] Sale of Residential Property. Mr. Jefferson purchased his residence on January 31, 2000 for \$165,000.00 (Tab 1 Exhibit 1). This property was sold on May 23, 2003 to his new partner, Ms. Middleton, for \$125,000.00 (Tab 15, Exhibit 1). She financed this purchase through the HSBC Bank of Canada, and the bank obtained an appraisal of \$136,500.00. In cross-examination Mr. Jefferson professed not to know the appraisal amount. This assertion is unlikely and, given Mr. Jefferson's demeanour throughout these proceedings, frankly incredible. Either he knew the value or he did not. If he knew the value, he was not honest in his evidence. If he did not, he demonstrated an attitude toward his own assets and bankruptcy, during its currency, that was casual in the extreme.
- [19] Mr. McGaughey, counsel for Ms. Larson, accepted that the difference between these two values (\$125,000.00 and \$136,500.00) may not be, from Ms. Larson's perspective, significant. This is because the sale represented a shortfall in the mortgage Mr. Jefferson granted to the HSBC Bank of Canada and that shortfall would, in all likelihood, have consumed most of the difference of \$11,500.00. That may be so, and the Trustee may have accepted the purchase price as reasonable in the circumstances, but in my view the transaction and Mr. Jefferson's casual disinterest in the amounts contribute to a perception of a lack of any serious commitment or intent on Mr. Jefferson's part to mitigate the financial harm and damage his bankruptcy visited on his creditors.
- [20] Mr. Jefferson's version of events, even prior to the sale to Ms. Middleton, is less than satisfactory. In this I refer to his evidence as to how his mortgage was paid. His budget sheets state that, until and including April 2003, mortgage payments were made on his residence. His December 2002 sheet has a notation that the payment was made "from reserves in the bank". The payments ceased in May and, of course, in that month Ms. Middleton purchased the home. On the budget reports for May through August he has endorsed a notation: "house under foreclosure". It is true that the HSBC Bank of Canada commenced foreclosure proceedings May 9 (Prince George Registry No. 19225, Tab 3, Exhibit 6), but it is hard to understand this development when the budget reports for the preceding six months all report mortgage payments of either \$800.00 or \$1000.00. Mr. Jefferson was asked the source of these payments, and (despite the "reserves in the bank" notation) said in cross-examination that Ms. Middleton had made these payments, though she would have done so by depositing the sums into his HSBC Bank of Canada account. He agreed that his passbook would reflect that, but when presented with the passbook for the account (Tab 9, Exhibit 6) which recorded the activity on the account from March 28, 2003 to October 16, agreed that no such entries were to be seen. He then assured the court that the entries would be in the previous passbook which, sadly, had been lost and was no longer available.
- [21] The question of value and price, taken with the ability of Ms. Middleton to purchase the property and support a mortgage while earning the decreasing income reported (para. 14, above), is, to say the least, curious. While I do not regard the transaction as a "smoking gun", I can accept Ms. Larson's suspicions as being reasonable.

- [22] Value of Mr. Jefferson's Company and the Purchase of its Assets. Mr. Jefferson's Statement of Affairs on his assignment do not even refer to his shareholding in his company, let alone attach any value to the shares. He refers only to "tools of trade" worth \$5,000.00. It is unclear whether these were his tools or the tools of the company. He does list, however, a shareholder's loan owed by him to the company of \$28,213.00.
- [23] The last available financial statements for the company (December 31, 2001, Tab 11, Exhibit 1) reflect amortization for 2000 of \$9,495.00 and for 2001 of \$7,000.00. The company reported net income for 2000 of \$94,921.00 and for 2001 of \$96,287.00. Finally, its retained earnings for 2000 and 2001 were \$94,921.00 and \$76,287.00, respectively.
- [24] On May 16, 2003 Mr. Earl Giesbrecht, a friend and customer of Mr. Jefferson, agreed to purchase the assets of the company from North Central Bailiffs for \$8,025.00 " . . . to be repaid in full by December 31, 2003". In other words the funds were paid by Mr. Giesbrecht to the bailiffs to purchase the assets, but were in fact a loan to Mr. Jefferson. In evidence December 9, some 22 days before payment was due, Mr. Jefferson could give no indication or assurance the sum would be repaid. The real point is, of course, that to someone (Mr. Giesbrecht or Mr. Jefferson, for example) the assets of the company were worth at least \$8,025.00, yet Mr. Jefferson did not report this or a similar value at the time of his assignment.
- [25] It would be naïve to assume that the sale to Mr. Giesbrecht was a truly arms-length one. Mr. Giesbrecht was, it is true, a customer of Mr. Jefferson's business. Mr. Giesbrecht apparently has or had certain specialized logging equipment ("Steyr") and it was in his business interest to ensure Mr. Jefferson's ongoing ability to service the equipment. The "sale", however, was strictly one of convenience and cannot be said to realistically reflect the value of the assets of the company.
- [26] What is fascinating to me is the inventory list attached to the bill of sale by the bailiff (Tab 14, Exhibit 6). This inventory, running some 39 pages, lists in impressive detail the stock and inventory of the company. Mr. Jefferson generated this computerized inventory and it lists a total value of \$70,422.63 for the inventory. This, he explained, is the book value, only, for the inventory, and that its real value would vary, depending upon the circumstances. He called it the "on hand value", and said that for retail purposes there would be a mark-up of 35%, to approximately \$95,000.00. Another value has been noted on the inventory, this one in handwriting, as \$28,768.89. Mr. Jefferson acknowledged that this sum was in his handwriting, and that he had attached this value to the inventory when Northern Bailiff representatives asked him for an estimate.
- [27] It is important to note that, after extensive evidence in trial and detailed examination of the available records and history of the company, Parrett J. at para. 45 of his decision, valued Mr. Jefferson's shares in the company at \$150,000.00. No appeal was taken by Mr. Jefferson on this point. Moreover, at the very least Mr. Jefferson should have recognized this conclusion, coming as it did after considerable judicial scrutiny less than 10 months before his

assignment into bankruptcy, as setting a benchmark for the valuation of an important asset. Rather than deal with this and explain how the value may have been in error or have changed, Mr. Jefferson has, in my view, chosen to blithely ignore the issue.

- [28] I dwell on this aspect, again, to reiterate my surprise that, given these values, Mr. Jefferson did not see fit to attach any value to his shares in his company (other than, perhaps, the \$5,000.00 value attached to tools).
- [29] In reality, Mr. Jefferson has continued in business as he chose. His activities may have waxed or waned, but it is clear to me that they did so as he wished, and that the activity (or inactivity) of the company in all likelihood reflected his choice to be more or less active in his business activities.
- [30] Payment of Various Debts. Two of Mr. Jefferson's unsecured debts, both relatively small, have been paid during bankruptcy. These were \$1,066.00 owed to the CCRA and \$1,269.66 owed to the HSBC Bank of Canada. CCRA acknowledge payment of its debt in its letter to the Trustee of June 20, 2003 (Tab 2, Exhibit 6); by that date the debt had risen to \$1,081.63. The HSBC Bank of Canada debt was apparently paid July 4, 2003. Asked directly about these debts in cross-examination, Mr. Jefferson could not explain how they were paid. Some bankrupts have so many debts that the payment (however achieved) of two smaller debts could escape notice. Once these debts were paid, however, the only unsecured debts remaining for Mr. Jefferson were a loan with the HSBC Bank of Canada (\$9,593.66), CIBC Visa (\$706.37) and Ms. Larson's entitlement to the balance of her judgment and accompanying costs. In the circumstances, Mr. Jefferson's inability to recollect or explain the payments is unsatisfactory and reinforces the impression of a casual approach to his financial obligations.
- [31] Almost contemporaneously with his assignment Mr. Jefferson obtained a line of credit with Canada Trust (Exhibit 6, Tab 12). He acknowledged that, in doing so, he had completed an application. Despite Mr. McGaughey's request that he do so, Mr. Jefferson did not produce a copy of the application. He told the court that, when requested, Ms. Gloria Pont of Canada Trust refused to provide the application. I find this unlikely. In the absence of further evidence, I expect that an appropriate authorization by Mr. Jefferson to his Trustee or to Mr. McGaughey would have permitted the disclosure of this application.
- [32] Use of Ms. Middleton's Credit Cards. This, in my view, is not a major issue. The matter reflects more upon Mr. Jefferson's credibility than it does, directly, on his ability to pay. Mr. Jefferson was asked the source of any financial assistance to him. He acknowledged that his mother had lent funds occasionally to him, and that he had access, on an occasional basis, to Ms. Middleton's bank debit card. He specifically denied that he used her credit card, but some time later, he agreed that he did, in fact, occasionally use Ms. Middleton's credit card. His vacillation on the point is frustrating and inexplicable, except to demonstrate, once more, Mr. Jefferson's disregard for "getting it right" in explaining his financial situation. Mr. McGaughey's November 21 letter to Mr. Jefferson's counsel pointed out this fact, and

requested copies of the credit account. They were not provided. Nor were copies of Mr. Jefferson's CIBC Visa statements for January 2002 through October 2002 produced, despite a request from Mr. McGaughey.

[33] Redemption of RRSPs. On the very eve of his bankruptcy Mr. Jefferson redeemed two RRSPs totalling \$10,000.00 (net \$8,482.06). I am satisfied that these sums were substantially, if not entirely, paid to the Family Maintenance Enforcement Programme (FMEP), in compliance with Mr. Jefferson's court-ordered support obligations and no issue arises.

[34] Hidden Funds. Mr. Jefferson was asked in cross- examination if he has or has ever had cash hidden in his residence. He specifically and clearly denied having such funds on hand. He was then confronted with the following from Mr. Justice Parrett's decision (at para. 18(c)):

On May 18, 2001, Mr. Jefferson, in his financial statement, shows both an R.R.S.P. of \$20,000 at Maritime Life and an "R.R.S.P. Homeowner Loan" of \$20,000 as a debt. His 2000 tax return shows an R.R.S.P. contribution of \$20,000. His explanation for this transaction was far from satisfactory and unsupported by any documentary or other evidence. In essence, he testified that he kept substantial quantities of cash from largely unspecified and questionable sources hidden in a secure and concealed location in his bedroom, and used it to fund his R.R.S.P.

[Emphasis added]

At first he continued to deny that he had such funds, then testified that he could recall telling Parrett J. that he did have such funds, and, finally, said he could not recall the source of the hidden funds.

[35] The Act. The relevant portions of the Act are ss. 158, 172, and 173, portions of which sections are:

158. A bankrupt shall

- (a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;
- (b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;

...

(k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;

(l) execute such powers of attorney, conveyances, deeds and instruments as may be required;

...

- (o) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee, or may be prescribed by the General Rules, or may be directed by the court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested.
172. (1) On the hearing of an application of a bankrupt for a discharge, the court may either grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time, or grant an order of discharge subject to any terms or conditions with respect to any earnings or income that may afterwards become due to the bankrupt or with respect to his after-acquired property.
- (2) The court shall on proof of any of the facts mentioned in section 173
- (a) refuse the discharge of a bankrupt;
 - (b) suspend the discharge for such period as the court thinks proper; or
 - (c) require the bankrupt, as a condition of his discharge, to perform such acts, pay such moneys, consent to such judgments or comply with such other terms as the court may direct.
- ...
- (4) The powers of suspending and of attaching conditions to the discharge of a bankrupt may be exercised concurrently.
173. (1) The facts referred to in section 172 are:
- (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, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible;
 - (b) the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by the bankrupt and as sufficiently disclose the business transactions and financial position of the bankrupt within the period beginning on the day that is three years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included.
- ...
- (d) the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities.
- ...

- (n) the bankrupt, if the bankrupt could have made a viable proposal, chose bankruptcy rather than a proposal to creditors as the means to resolve the indebtedness; and
 - (o) the bankrupt has failed to perform the duties imposed on the bankrupt under this Act or to comply with any order of the court.
- [36] In my view Mr. Jefferson has not complied with those duties enumerated in s. 158 above. While the existence and operation of his company, J.W. Hydraulics Ltd., may have been obvious to his Trustee at the outset, Mr. Jefferson did not take care to properly list and value his shareholding or interest in the company in his Statement of Affairs, except where the disclosure might benefit him (as, for example, listing only his shareholder's loan with the company).
- [37] Mr. Jefferson did not deliver, nor did he make any realistic effort to deliver, the books and records of the company or its successor proprietorship either to his Trustee or to counsel for Ms. Larsen so that an accurate understanding of his financial affairs and prospects could be achieved. When asked to obtain information or records from third parties, he rarely did so, and did not execute or offer an appropriate release or authority to permit the information to be obtained.
- [38] In short, Mr. Jefferson did not actively aid his Trustee or his creditors in mitigating the damage wrought by his assignment. He seemed content to remain passive and hope that the financial storm would blow over.
- [39] As far as the offences considered by s. 173(1), I am satisfied that, quite possibly, Mr. Jefferson's assets may have exceeded 50% of the value of his unsecured debts. I have already expressed considerable doubt as to the value of his company's inventory and his (apparent) view of his shares in the company as being worthless. Based on his own telling, however, the assets are not greater than 50%. In any event, he has not accounted satisfactorily for the radical reduction in value of his company's worth since his divorce proceedings, less than one year before his assignment.
- [40] Certainly Mr. Jefferson did not keep (or produce) sufficient books of account as are appropriate or even in keeping with the history of his company. His facile assurance that the source documents "went missing" and that his computer records are not accessible is simply incredible.
- [41] It is possible that, had he approached the matter responsibly and with reasonable candour, that Mr. Jefferson could have made a viable proposal. To be fair, of course, and given the rancour engendered by Mr. Jefferson's divorce proceedings (much, likely, caused by his own actions) Ms. Larsen may well have refused any payment but 100% of Mr. Jefferson's obligation.

- [42] In short, it is, to paraphrase s. 173(1)(o), clear that Mr. Jefferson has failed to perform his duties while in bankruptcy. Section 172 therefore presents several options: the application for discharge may be refused, or it may be suspended and/or granted on conditions.
- [43] It is clear to me that, to use a time-honoured phrase, Mr. Jefferson has attempted to use this process as a fiscal carwash (per van der Hoop, L.J.S.C., in *Re Croome* (1978), 30 C.B.R. (N.S.) 102, at 104). Many reported cases have repeated the principle that the Act should not be used to avoid a particular debt or obligation, particularly if that debt arises from a judgment. Feldman, J., in *Re Bobyk* (1995), 37 C.B.R. (3d) 25, considered a situation very similar to Mr. Jefferson's. Mr. Bobyk was ordered in matrimonial proceedings to pay his wife in excess of \$30,000.00 by way of equalization payment, together with an award of " . . .substantial costs". Instead of paying, Mr. Bobyk made an assignment. Justice Feldman's comments are a propos:

It appears that this is a situation where Mr. Bobyk elected to go bankrupt in order to avoid paying his wife the legal costs he was ordered to pay . . .

Although he says he does not have access to family funds anymore, by providing a home, a car, and meals it is clear that his family is very willing to assist him to the extent he needs. (At para. 5)

In my view this is a situation akin to *Kozack v. Richter* ((1973) 20 C.B.R. (N.S.) 223 (S.C.C.)) where the Bankruptcy Act is not to be permitted to be used to avoid a judgment for tort or for a matrimonial proceeding . . . Nevertheless our court process cannot condone a situation where spouses force each other through the financially and emotionally onerous burden of matrimonial litigation without taking responsibility for the financial consequences of losing. (at para. 7)

In the end, finding that Mr. Bobyk lived frugally and did not have more income or resources than he reported, the court directed that Mr. Bobyk consent to judgment for 70% of his proved claims.

- [44] Mr. Jefferson has not been as forthright as, apparently, Mr. Bobyk was. He should not be permitted to shed his court-ordered obligations as he might a dirty shirt. A condition on his discharge should reflect that and the fact that his income can support a substantial payment to his Trustee. Moreover, a suspension is required so that his lack of cooperation and candour be recorded.
- [45] Mr. Jefferson is therefore discharged on the condition that he pay to his Trustee the sum of \$50,000.00. His discharge is also suspended for a period of six months. The suspension will commence upon the payment of the full sum of \$50,000.00.

"Master D. Baker as Registrar"

February 20, 2004 - Corrigendum to the Decision as Registrar in Bankruptcy issued by Master D. Baker advising that paragraph 2, line 3, which reads, in part:

"held on January 23, 2002 and February 24, 2002 "

should read:

" January 23, 2003 and February 24, 2003 "

This change is noted and applied.

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Prepared on 29 October 2026 · Esheria