

CANADA / JUDGMENT

Toomey (Re)

2025 BCSC 1427

COURT

Supreme Court of British Columbia

DECIDED

18 June 2025

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2025 BCSC 1427 Toomey (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Toomey (Re),

2025 BCSC 1427

Date: 20250618

Docket: B230182

Registry: Vancouver

In Bankruptcy and Insolvency

In the Matter of the Bankruptcy of Estelle Jane Toomey

of the City of Vancouver, in the Province of British Columbia

Summary Administration

Before: Associate Judge Harper

Oral Reasons for Judgment

In Chambers

Counsel for the Debtor, Estelle Toomey:

R.B. Rogers

(by videoconference)

Counsel for the Creditor, Clark Toes:

C.G. Reedman

(by videoconference)

N. Ngwaba

(by videoconference)

Appearing for the Trustee MNP Ltd.:

L. Paul

(by videoconference)

C. Chornopski

(by videoconference)

Place and Date of Hearing:

Vancouver, B.C.

June 10, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 18, 2025

- [1] THE COURT: These are my oral reasons for judgment. If a transcript is required, I reserve the right to edit for clarity.
- [2] The bankrupt, Dr. Estelle Jane Toomey, made a voluntary assignment into bankruptcy on August 17, 2022. Her declared secured liabilities were about \$49,558 for a van loan, and unsecured liabilities of \$397,481, of which \$337,565 was owing to Dr. Toomey's friend, Clark Toes.
- [3] The trustee has allowed Mr. Toes' claim at \$325,000. Dr. Toomey has no assets and has paid only \$1,800 into the estate. Mr. Toes objects to Dr. Toomey's discharge.
- [4] Dr. Toomey obtained a person with a disability designation in April of 2022. Her income is about \$1,800 per month. She is age 56 and has two daughters, age 13 and 16, although the older daughter does not live with Dr. Toomey.
- [5] The medical evidence establishes that Dr. Toomey is disabled from work. She is not expected to work in the future. The trustee recommends that Dr. Toomey's discharge from bankruptcy be suspended for one day.

- [6] Mr. Toes argues that the application should be refused or that a conditional order of \$75,000 be made. The large debt owing to Mr. Toes arises from Dr. Toomey being accepted into a doctoral program at Oxford University back in 2003. Dr. Toomey and Mr. Toes were in a romantic relationship between 2001 and 2003. They remained close friends after their romantic relationship came to an end.
- [7] Mr. Toes encouraged Dr. Toomey's attendance at the program and provided a guarantee to Oxford to cover her expenses. Despite the large expenditures, Mr. Toes was willing to underwrite Dr. Toomey's program. As Dr. Toomey was a close friend and because he viewed her doctorate from a prestigious institution as an investment that would likely yield returns, he agreed to lend her the money to pursue her studies. He says in an email to Dr. Toomey March 14, 2004:

I am starting to formulate a plan for your further funding, which I will conclude in the coming weeks. Needless to say, it will all work out.

- [8] As events have proven, it did not all work out at all. Despite obtaining her DPhil, the English version of a PhD, and despite working in her chosen field, Dr. Toomey has not paid a single cent to Mr. Toes.
- [9] Dr. Toomey repeatedly assured Mr. Toes that she would repay him. Despite the lack of any repayment, Mr. Toes continued to advance funds over time. His evidence is that he thought his friend would honour her obligation to repay the funds, given her anticipated earning potential as a graduate of a prestigious university.
- [10] Dr. Toomey's pre-bankruptcy income is not before the court in any meaningful way. As I understand the evidence, for 17 years her income was non-taxable because she worked outside the country, and therefore she was not required to file income tax returns in Canada.
- [11] By 2008, the debt owing to Mr. Toes was about \$261,000 US. Dr. Toomey agreed to pay installments of \$1,500 per month commencing in 2009 but never paid anything. In email correspondence on August 12, 2022, Dr. Toomey and Mr. Toes appear to reach a settlement of \$140,000, and yet the true purpose of Dr. Toomey reaching out to Mr. Toes was to obtain the amount of the debt and Mr. Toes' contact information for the purpose of preparing the bankruptcy documents.
- [12] I read the emails the same way Mr. Toes does: in other words, that it was an offer and a conclusion of a settlement. Dr. Toomey was not candid with Mr. Toes. In fact, she filed for bankruptcy five days after the email correspondence.
- [13] I accept that Dr. Toomey has no ability currently to pay anything to her estate. However, there is a significant issue to consider. Dr. Toomey is the beneficiary, along with her sister, of a half share in her mother's estate. Other bankruptcy decisions have addressed inheritances; for instance, Eng (Re), 2014 BCSC 525. In that case, there was a potential inheritance, but it was not a certain matter.

[14] At paragraph 55, Master Muir, as she then was, says:

[55] I was also referred to *Re Jobin* (1932), 13 C.B.R. 532, where a discharge was refused in circumstances where the bankrupt was expecting to receive benefit from her father's estate.

[15] In *Re Jobin*, the court says that the debtor may reasonably expect to benefit from her father as his heir, or as a devisee under his will. The court goes on to say that:

2 The bankrupt does not desire or intend to go into business again, but she desires to be free to take whatever benefit might accrue to her from her father or his estate.

[16] The court concludes:

3 I see no reason why the Court should do anything to assist her in receiving money and being free to spend that money for herself and not in payment of her just debts.

4 The application will therefore be dismissed.

[17] In the present case, Dr. Toomey's mother is age 80 and has dementia. She is in long-term care. Dr. Toomey has a power of attorney which she uses to manage her mother's funds.

[18] I note that Dr. Toomey's father is deceased, and therefore Dr. Toomey's mother is the sole source of future funds for Dr. Toomey through her estate. Dr. Toomey's mother is not able to change her will because she does not have legal capacity. Therefore, this case is not a case of a potential inheritance; it is a case of an absolute entitlement to an inheritance, subject to some risks that I will discuss further.

[19] The current amount in Dr. Toomey's mother's estate is about \$202,000. Dr. Toomey's mother receives pension income. It is unclear from the evidence whether the pension income is currently sufficient to meet Dr. Toomey's mother's care needs.

[20] Dr. Toomey says that her parents helped her financially over the years. She has no documents to demonstrate any payments made by her parents. There is no loan agreement.

[21] Dr. Toomey says that despite being a beneficiary of her mother's estate, she does not intend to take anything when her mother dies. She says this is because of her parents' financial support. She says there is a "family arrangement" whereby she will renounce her share and give it all to her sister. I find this evidence difficult to accept. There is no evidence to support this claim.

[22] Dr. Toomey's parents made identical wills on September 25, 2023. The will makes no reference to any advance on inheritance that is expected to be taken into account, in other words a hotchpot provision. A hotchpot provision is a well-known concept to estate lawyers, and I have no doubt that Dr. Toomey's parents' solicitor canvassed with them their wishes.

- [23] I reiterate that these are very recent wills, September 25, 2023. A hotchpot provision is a provision in a will that takes into account advances on inheritance and instructs the trustee to adjust the distribution to take that advance into account. If Dr. Toomey's parents had intended that the money be taken into account, they would have said so.
- [24] Further, by September 25, 2023, Dr. Toomey had had her person with a disability designation for almost one and a half years. I have to conclude that Dr. Toomey's parents knew of this and even if they did not, which I would find very surprising, it would have been obvious to them that their daughter was not medically fit and not earning income. With that in mind, they crafted their wills deliberately.
- [25] By the time of the wills being drafted, Dr. Toomey was in bankruptcy. Dr. Toomey's parents must have known that and that she needed her share of the inheritance to pay her creditors.
- [26] The only way that Dr. Toomey's sister can challenge the will is through a wills variation action. She would have to prove that the parents' will did not make adequate provision for her even if she could demonstrate that Dr. Toomey received financial support over the years over and above what would be considered gifts.
- [27] Of course, the court on this application cannot assume the outcome of any future litigation, but I reject the notion that the so-called family arrangement should be taken into account on this application.
- [28] Further, even on the present financial picture and even assuming hypothetically that Dr. Toomey has already received the \$100,000 that she says she has received, her share would not be nothing. It would be \$51,000 even on her current analysis.
- [29] Although Dr. Toomey asserts that the current funds in her mother's account will be needed for her mother's future care, there is no demonstrable or objective evidence to prove that proposition.
- [30] The legal principles are straightforward. The test on a discharge application requires the court to consider:
- a) the rehabilitation of the bankrupt;
 - b) the creditor's right to be paid;
 - c) the integrity of the bankruptcy process and the public's perception of it.

Poonian v. British Columbia (Securities Commission), 2024 SCC 28, paras. 23-24.

- [31] Is Dr. Toomey an honest but unfortunate bankrupt? I agree that she is unfortunate. I cannot say that she is dishonest, but she has been somewhat misleading regarding her promises to pay Mr. Toes, and I find the email communication of August 12, 2022 misleading. She made false assurances as to repayment.

- [32] Counsel for Mr. Toes puts forward several factors from s. 173 of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, [BIA].
- [33] I find that some, but not all, of these factors apply here. Section 173(1)(b) of the BIA is as follows:
- (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.
- [34] Dr. Toomey was not in business in the three years before the bankruptcy, but there are no accounts that would assist the court in understanding what her income was, what her financial position was.
- [35] Section 173(1)(d):
- (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.
- [36] Here, although not directly applicable, I take into account the entitlement under the inheritance and the lack of any cogent evidence to support the claimed family arrangement.
- [37] Finally, in the notice of intended opposition to the discharge of the bankrupt, counsel for Mr. Toes refers to the principles of commercial morality, deterrence and denunciation, that mandate either a refusal of the bankrupt's discharge or imposition of a substantial conditional order of discharge.
- [38] Section 172 of the BIA sets out the powers of the court to make orders on an application for a discharge from bankruptcy. The court may:
- (a) grant or refuse an absolute order of discharge; (b) suspend the operation of an absolute order of discharge for a specified time; or (c) 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 the bankrupt's after-acquired property.
- [39] In my view, the fact that Dr. Toomey's claimed assertion whereby she gives her share of the estate to her sister threatens the integrity of the bankruptcy system. I do not accept that she will not receive her inheritance as expected. Although *Re Jobin* is an old case, it is still good law.
- [40] In the result, I make the following order: the application for discharge is dismissed with leave to reapply after June 18, 2026.
- [41] Those are my reasons.

(SUBMISSIONS ON COSTS)

[42] THE COURT: I agree with that approach. So the order will be that Mr. Toes' application for costs is deferred to the next hearing.

"Associate Judge Harper"

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