

2018 CarswellOnt 8422  
Ontario Superior Court of Justice

Kolokythas, Re

2018 CarswellOnt 8422, 292 A.C.W.S. (3d) 700

**In the Matter of the Bankruptcy of Apostolis Kolokythas,  
In the City of Toronto, In the Province of Ontario, Manager**

Master J.E. Mills

Judgment: May 22, 2018

Docket: 31-1335246

Counsel: M. Harris, for Bankrupt  
F. Paquin, for Opposing Creditor

Subject: Insolvency

**Related Abridgment Classifications**

Bankruptcy and insolvency

[XV](#) Discharge of bankrupt

[XV.8](#) Conditional discharge

[XV.8.b](#) Student loans

**Headnote**

Bankruptcy and insolvency --- Discharge of bankrupt — Conditional discharge — Student loans

Bankrupt filed assignment in March 2010 and was discharged in December 2011 — Discharge did not include student loans — Bankrupt faced many personal and medical challenges since leaving school and made no payment toward student loans — Outstanding student loan was in excess of \$7,000 — Bankrupt brought application to have government claims released — Application granted — Failure of bankrupt to use Ontario Student Loan Rehabilitation Program was not bad faith — Bankrupt's health was precarious and would continue to impact ability to earn income — Bankrupt was unable to pay debt in full.

**Table of Authorities**

**Cases considered by *Master J.E. Mills*:**

*Herve, Re* (2008), 2008 NSSC 216, 2008 CarswellINS 369 (N.S. S.C.) — considered

**Statutes considered:**

*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

s. 178(1.1) [en. 1997, c. 12, s. 105(3)] — considered

APPLICATION by bankrupt for discharge of student loan debt.

***Master J.E. Mills*:**

1 The bankrupt filed an assignment on March 18, 2010 and was discharged on December 19, 2011. Pursuant to s178(1)(g), his student loans were not discharged. The bankrupt now seeks relief under s178(1.1) to have the government claims released. Canada Student Loans consents to the motion; Ontario Student Loans does not.

2 In order to obtain relief under s 178(1.1), the bankrupt must show that he has acted in good faith in connection with the debt and that he has, and will continue to suffer financial difficulty to such an extent that he will be unable to pay the debt.

3 There is no question in my mind that the bankrupt has faced many personal and medical challenges in the years since he left school to assist with his family's failing business. His serious health issues have impeded his ability to work and earn income.

He has been reliant on social assistance for several years. The bankrupt has not made a single voluntary payment towards this student loan nor has he availed himself any of the relief programs available under the student loan legislation. It is on this basis that the Ministry submits the bankrupt has not acted in good faith, thereby failing to meet the first element of the two prong test in s178(1.1). Upon payment of \$1,751.52, the bankrupt can cure his default and thereby be entitled to further aid through the Ontario Student Loan Rehabilitation Program (OSLRP). The bankrupt is now working and collecting ODSP for his special dietary needs. Based on his current income and expense statement and his employee statement of earnings and deductions, the bankrupt earning approximately \$30,000 per year - an amount similar to his 2015 and 2016 Line 150 income for tax purposes. The outstanding student loan is now in excess of \$7,000. The BIA requires the debt be either affirmed or discharged. There is no middle ground of simply requiring a curative payment to allow the bankrupt to access the OSLRP (*Herve, Re, 2008 NSSC 216* (N.S. S.C.)). Having regard to the many personal challenges faced by this bankrupt over the last decade, I am not prepared to accept that his failure to avail himself of the OSLRP to date amounts to a failure to act in good faith with respect to this loan so as to warrant a denial of the relief afforded by s178(1.1) of the BA. Further the bankrupt's health has, and will continue to, impact his ability to earn income. His employment is precarious. I am of the view that the bankrupt's financial status is such that he is, and will continue to be, unable to pay this debt in full.

4 Accordingly, I exercise my direction under s178(1.1) to order the claim of the crown in the Right of Ontario released and hereby discharged. There shall be no order as to costs.

*Application granted.*