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Docket: 168051 or 1149/96
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Registry: Prince Rupert

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY**

**AND IN THE MATTER OF THE BANKRUPTCY OF
JEANETTE CHARLOTTE GEURTSSEN**

**AND IN THE MATTER OF THE BANKRUPTCY OF
DAVID DIRK GEURTSSEN**

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE R.T. ERRICO

(IN CHAMBERS)

Counsel for Her Majesty the Queen
In Right of the Province of British Columbia: P.J. Lipsack

Appearing In Person D.D. Geurtsen and J.C. Geurtsen

Date and Place of Hearing: February 16, 1998
Prince Rupert, B.C.

[1] Mr. and Mrs. Geurtsen each made assignments into bankruptcy on October 4, 1996. They now apply for their discharge and this application is opposed by one of the creditors, the Province of British Columbia. The Province is a creditor by virtue of student loans granted to both Mr. and Mrs. Geurtsen in the amounts of \$12,061.07 and \$21,157.36 respectively. The other creditor of Mrs. Geurtsen is the Government of Canada under the Canada Student Loan program in the amount of approximately \$25,000. The other creditors of Mr. Geurtsen are the Government of Canada under the Student Loan program in the amount of approximately \$22,000 and credit card debts of approximately \$5,000. The indebtedness prompting their assignments into bankruptcy were clearly the student loans.

[2] Prior to the filing of the assignments, Mr. and Mrs. Geurtsen applied to the Ministry of Children and Families of the Province to be foster parents. They have been foster parents since the date of the assignments and as such have received payments from the Ministry for serving as foster parents. They are foster parents for special needs children and the remuneration they receive takes that into account.

[3] The issues on this application are whether that remuneration received by Mr. and Mrs. Guertsen should be considered as earnings and if so, in view of those earnings and in view of the nature of the indebtedness as student loans

should Mr. and Mrs. Geurtsen be discharged absolutely or conditionally with provision for payment being made to the Trustee as a condition.

[4] These issues were dealt with both by counsel for the Province and for Mr. and Mrs. Geurtsen by considering their incomes and expenditures not separately, but as joint family income and expenditures, and I propose to do so in these reasons.

[5] Mr. Geurtsen has been employed as a school teacher since the date of the assignment. His net earnings have been gradually increasing from that time to this, and they are now approximately \$2,900 - \$3,000 per month for the ten school months or approximately \$2,400 per month over the calendar year.

[6] In addition to this income, Mr. and Mrs. Geurtsen receive certain tax credits and supplements for their own three children of approximately \$270 per month.

[7] Payments they receive from the Ministry for the two foster children \$3,504.88 a month. Of this amount, \$2,040 is "fee for service" and \$1,464.88 is for maintenance. I am led to understand from both Mr. and Mrs. Geurtsen and counsel for the Province that the Ministry of Children and Families does not consider the fee for service to be taxable income. I do not

know if this view is shared by Revenue Canada or the provincial taxing authority. In any event, it is expected by the Ministry that this money will be used in part in a manner that will benefit the foster child. The affidavit of Mr. Anderson of the Ministry of Children and Families states that the maintenance payment is considered sufficient to cover all the costs incurred for caring for a foster child and the service payment is to cover the parents' costs incurred in providing care to level two foster children, as well as to remunerate them for their time and efforts in providing foster care. The maintenance payment of \$732.44 per child has a part of it designated as "an acknowledgement standard fee" and is a payment to the foster parent in recognition of the additional skill and service by them in caring for children of varying needs and backgrounds. The acknowledgement standard fee is \$63.46 per month.

[8] Tables attached to Mr. Anderson's affidavit indicates that the maintenance payment is to cover the costs of food, household, transportation, personal needs, recreation, clothing, recreational/cultural equipment, the child's allowance, babysitting relief, gifts and activities, and education.

[9] Mr. and Mrs. Geurtsen have never included the sums received from the Ministry in their bankruptcy documents. They advised me that they were told that it was not necessary by

their Trustee. I have no confirmation of this directly from the Trustee as he did not appear nor was represented at the hearing nor filed any material other than his report. The report only states that there is no excess over current guideline amounts. This would indicate that the Trustee considered the family income to be limited to Mr. Geurtsen's teacher's salary.

[10] Guidelines issued by the Superintendent are guidelines to amounts to be considered under s. 68 of the *Bankruptcy Act* which provides for the Trustee obtaining an order directing payment to the Trustee of part of such monies received by a bankrupt for the benefit of creditors. The Trustee is supposed to attempt to obtain those funds without the necessity of obtaining an order using the guidelines as a reference. This was not done in this case for whatever reason.

[11] The wording of s. 68(1) refers to earnings as follows:

"Notwithstanding section 67(1), where a bankrupt

- (a) is in receipt of, or is entitled to receive, any money as salary, wages or other remuneration from a person employing the bankrupt, or
- (b) is in receipt of, or is entitled to receive from a person any money as payment for or commission in respect of, any services performed by the bankrupt,

the trustee may..."

In my view, the wording of s. 68(1)(a) and (b) is broad enough to include that portion of the service payment which is to

remunerate Mr. and Mrs. Geurtsen for their time and efforts in providing foster care.

[12] Mr. and Mrs. Geurtsen have since the hearing on February 16, 1998, filed an affidavit showing their budget for a month for themselves, their three children and the two foster children. Total expenditures by Mr. and Mrs. Geurtsen are \$6,000 per month. That budget apportions sums to be chargeable against the service payment totalling \$2,197. Mr. Anderson in his affidavit reviews Mr. and Mrs. Geurtsen's budget and calculates that the amounts that should be charged to their service payment should be \$678 per month plus any tenants insurance premiums covering loss or damage to their property. Some of the more notable items in this budget are as follows:

Miscellaneous -- \$500. Mr. and Mrs. Geurtsen make special reference to what this includes. Mr. Anderson notes that those would be covered either under the maintenance payment or could be largely reimbursed upon application to the Ministry.

Vacation/School Trips -- \$800. Mr. and Mrs. Geurtsen explained that with special needs children both they, their own family and the children need relief by way of vacations and trips. In my view, for persons in bankruptcy, annual expenditures for vacations of close to \$10,000 are excessive.

Food -- \$1,400. This is for the full family of five, plus the two foster children. This also appears to me to be

excessive. I note that in a statement of expenses filed September 5, 1997, Mr. Geurtsen shows food at \$750. In addition also claimed is \$250 a month restaurant meals. Clothing -- \$250 a month for their family. I note that Mr. Geurtsen in his statement filed September 5, 1997, has that figure at \$100.

[13] It is to be noted that the Geurtsen's monthly expenses include items that are paid in part by the maintenance payments of \$1,464.88. If this is deducted from those expenses, the net amount would be less than \$4,600. The Superintendent's guidelines for a family of five show an amount \$3,090 for reasonable expenses.

[14] I am of the view that of the \$2,040 received by Mr. and Mrs. Geurtsen for their service payment at least \$1,200 is in excess of what is required for them to provide care to their two foster children after taking into account the maintenance payment of \$1,464.88 received. Including Mr. Geurtsen's net income, the tax credits and supplements, and \$1,200 of the service payment, Mr. and Mrs. Geurtsen have a net income per month of \$3,870 after making full provision for their foster children. This is \$780 in excess of the guideline amounts for a family of five. I am of the view that \$350 per month would represent a fair and equitable payment that should have been made by Mr. and Mrs. Geurtsen to the Trustee since they have made their assignments.

[15] It is clear that Mr. and Mrs. Geurtsen have declared bankruptcy with student loans as their principal liability. The considerations to be given in such a case have been reviewed in a number of cases including **Re Van Stenes** (1992), 13 C.B.R. (3d) 131 (B.C.S.C.). MacDonald J. considered the character of student loans which should have a bearing on the outcome of a discharge application. These are (a) prejudice to a single significant creditor, (b) public interest in upholding the programs, (c) failure to make reasonable efforts to pay, and (d) present and future capacity to pay.

[16] In **Re Legault** (1994) 88 B.C.L.R. (2d) 242 (C.A.), Hollinrake J.A. at pp. 258 and 259 stated that it was open to a court to consider the matter set out and **Re Van Stenes** being careful not to attach conditions that ties a millstone around the bankrupt's neck. At p. 259, Hollinrake J.A. again emphasizes that the court should not focus on the fact that the debt was created through a student loan program to the extent that general principles which apply in a discharge application are in any way lessened.

[17] I think that those principles set out in **Re Van Stenes** are largely present in this case. The loans were made by reason of the need for financial help and not because the person is credit worthy or has assets. In a sense, these loans are mortgages on future opportunities and are expected to be paid from future earnings which will presumably be enhanced by the

training they enable. There was no particular financial misfortune that has descended upon these bankrupts. There has been no effort to repay. While Mr. Geurtsen may not have had steady employment for a period prior to the bankruptcy, he did have such employment at the time of his bankruptcy and at that time they were also anticipating becoming foster parents with the resulting remuneration. Finally, the discussion above establishes that Mr. and Mrs. Geurtsen have a present and future capacity to pay.

[18] Counsel for the Province submits that a discharge should be granted only on the condition that Mr. and Mrs. Geurtsen each pay \$15,000 to the Trustee over a period of 53 months in increasing installments. I am of the view that the discharge should be conditional upon payment to the Trustee, but I believe that to be over too extensive a period of time. There is some authority for extending the usual maximum period of three years to a longer period, but I do not think it appropriate in this case. There will be an order granting each Mr. and Mrs. Geurtsen a discharge upon condition that each pay to their Trustee the sum of \$6,300 in minimum monthly installments of \$175 each.

[19] Counsel for the Province has asked for costs to be awarded on a lump sum basis. An affidavit has been filed setting out hours and disbursements incurred. A total of \$12,000 including disbursements of \$3,786.95 has been suggested. I do not think

I have adequate information to make a lump sum order. As I do not think the other creditors should benefit from the efforts of the Province at the expense of the Province, I order the Province is entitled to its costs out of the estate to be taxed on a solicitor client basis. I further order the restrictions set out in s. 197(7) and (8) of the *Act* shall not apply.

"R.C. Errico, J."