



Doctors — of all ages — should be wary of bankruptcy

Susan Lightstone

There's a lot of chatter these days about the level of debt new doctors face as they embark on their careers, but an Ottawa bankruptcy specialist says their financial problems often pale beside those of many well-established physicians.

Stanley Kershman, a lawyer specializing in bankruptcy and insolvency law, says the vast majority of his physician clients are well-established, middle-aged professionals. And professionals — doctors, lawyers, accountants and dentists — account for 30% of his clients.

"When your practice is at its peak you're earning lots of money, but at the same time you're spending lots," he comments. "In many cases, Revenue Canada is the major creditor. I've seen doctors reassessed for well over \$100 000 in taxes. They're caught in a cash crunch. Others fail to make their [quarterly tax payments] and then can't catch up."

Kershman suggests, only half jokingly, that an additional statement — "I will pay my income tax in full and in a timely fashion" — should be added to the Hippocratic oath.

When debts can no longer be paid as they fall due, it may be time to visit a lawyer or trustee in bankruptcy. However, Kershman says bankruptcy may not be the most appropriate way to deal with financial difficulties. First, it may be possible for a debtor to deal informally with his or her creditors. If that doesn't work, he advises his clients to try filing a proposal instead of declaring bankruptcy.

The federal Bankruptcy and Insolvency Act sets out the procedures for both bankruptcies and the proposals that debtors present to creditors. (Creditors are allowed to approve or reject a proposal.)

Kershman says the law favours the proposal route. A proposal allows the person who is unable to meet financial obligations to restructure his or her affairs. It allows for a reduction in the amount of the debt, an extension of time allowed for payment of the debt, or both. "The ability to design a proposal is limited only by the imagination of the person drafting it," says Kershman. "It promotes rehabilitation as opposed to the liquidation of assets as part of the bankruptcy process, placing the onus on debtors to put their houses in order rather than throwing up their hands and walking away."

Under the proposal framework, the debtor makes a lump-sum payment, a series of monthly payments or a combination of both to the trustee in bankruptcy, who then pays the creditors.

Once the proposal is completed the debtor has cleared the debts settled in the proposal and those creditors no longer have a right to collect any unpaid balance.

The legislation provides 2 types of proposal procedures: consumer (Division II — where debts are less than \$75 000, excluding home mortgage) and commercial (Division I — where debts are greater than \$75 000, excluding home mortgage).

Most doctors will find themselves in the latter category and, unlike the consumer proposal, rejection of a commercial proposal by creditors results in automatic bankruptcy. This means that commercial proposals should be made as appealing as possible — or else the debtor may face bankruptcy.

That "or else" is the least desirable option facing a debtor. Doctors don't face the same professional penalties as others: bankrupt lawyers lose the right to manage trust accounts, while accountants lose their professional designation. However, there's still a heavy social and financial stigma attached to bankruptcy. "This is a process where a person assigns all of his or her assets to a trustee in bankruptcy and, at the same time, all debts [save certain specific ones spelled out in legislation] are extinguished. If a person is a first-time bankrupt, it's a 9-month process during which the debtor must attend 2 counselling sessions and any creditor can oppose a discharge of the bankrupt.

"In the case of professionals who are earning a good income, the discharge is often opposed by creditors, who argue that the debtor has the ability to pay monies to the trustee for the benefit of the creditors."

Upon discharge, it's time to start over. A bankrupt physician's credit rating will be hit hard. Credit records will indicate that a debtor filed for bankruptcy and that notation will remain on the record for 6 years following discharge. (Notation of the filing of a proposal will mar a debtor's credit record for 3 years following completion of the proposal.)

However, there are no more financial obligations, save and except for some important debts that survive a bankrupt person's discharge. These include fines and liabilities for alimony. The exception of greatest interest to young doctors is that if the bankruptcy occurs within 10 years of leaving school, debts related to student loans are not cleared.

Kershman, who has dealt with hundreds of financially troubled professionals during 23 years of practice, has a simple warning for all physicians. Most Canadians, he says — including doctors — are only 2 paycheques away from bankruptcy.

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