

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** *In the Matter of the Bankruptcy of Bijan Naghshbandi*

**BEFORE:** Associate Justice Rappos

**COUNSEL:** *Sean Zeitz and Cora Madden*, for Shahram Heidari, Tarra Engineering Inc., and Tarra Engineering and Structural Consultants Inc.

*Mark Persaud*, for Bijan Naghshbandi

*John Delo*, representative of A. Farber & Partners Inc.

**HEARD:** June 4, 2025 (in person)

**REASONS FOR DECISION**

**Overview**

[1] Bijan Naghshbandi filed an assignment in bankruptcy. The reason he gave for the filing was “business dispute with former partner, judgment, marital separation and unemployment”.

[2] As a first-time bankrupt with no available surplus income, Mr. Naghshbandi was entitled to an automatic discharge nine months after his date of bankruptcy, unless there was opposition to his discharge.

[3] A. Farber & Partners Inc., the trustee in bankruptcy, opposed his discharge, as did creditors Shahram Heidari and his companies Tarra Engineering Inc., and Tarra Engineering and Structural Consultants Inc. (collectively, the “**Heidari Creditors**”).

[4] Mr. Naghshbandi requests that the Court grant him an absolute order of discharge, on the basis that the Trustee and the Heidari Creditors have failed “to adduce any credible evidence to support their baseless speculations”, and due to the conduct of the Trustee and the Heidari Creditors throughout the proceeding, which Mr. Naghshbandi argues has been outrageous and scandalous.

[5] The Heidari Creditors request that the Court grant Mr. Naghshbandi his discharge conditional on Mr. Naghshbandi paying \$125,000 to the Trustee. The Heidari Creditors argue that such a conditional order of discharge is warranted given Mr. Naghshbandi’s litigation conduct and the existence of numerous facts under section 173 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). During oral submissions, counsel to the Heidari Creditor also requested a six-month suspension of any discharge.

[6] The Trustee did not take an active part in the discharge hearing. It simply relied on the information contained in the reports it has filed to date. The Trustee did not provide a recommendation to the Court on any potential terms of discharge.

[7] For the reasons that follow, Mr. Naghshbandi shall be discharged from bankruptcy upon payment of \$95,000 to the Trustee.

### **Legal Principles**

#### *Objectives of the BIA*

[8] The two main purposes of the BIA are the equitable distribution of a bankrupt's assets among his creditors and the bankrupt's financial rehabilitation.<sup>1</sup> A bankrupt's financial rehabilitation involves allowing an "honest but unfortunate debtor" to obtain a discharge of his debts and have a "fresh start", free of debt.<sup>2</sup>

[9] Other objectives of the bankruptcy system include preserving and maximizing the value of a debtor's assets and protecting the public interest.<sup>3</sup> While the central purpose is to enable the honest but unfortunate debtor to make a fresh start, parity of treatment between debtors and fairness to creditors must be kept in mind.<sup>4</sup>

[10] Bankruptcy is not a process to be used by a debtor to avoid his responsibilities to the maximum extent that he is able to do so. Bankruptcy can become an abuse if a debtor can go into bankruptcy as a convenient means of evading payment of just obligations that he has incurred and obtain a discharge without difficulty.<sup>5</sup>

#### *Discharge Hearings*

[11] Section 168.1(1) of the BIA sets out situations where a bankrupt may be entitled to be automatically discharged from bankruptcy. Section 168.2(1) provides that a trustee, a creditor, or the Superintendent of Bankruptcy may oppose an automatic discharge by giving notice of the opposition, together with the grounds for the opposition, before the automatic discharge would otherwise take effect.

[12] If there is opposition to an automatic discharge, a hearing of the opposition is to be held in the manner referred to in sections 169 to 176 of the BIA.<sup>6</sup>

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<sup>1</sup> *Aquino v. Bondfield Construction Co.*, 2024 SCC 31, para. 36.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Montreal v. Giannotti*, 2000 CanLII 16928 (ON CA), para. 12, citing *Re Goodman*, [1995] O.J. No. 72 (Gen. Div.), para. 1.

<sup>5</sup> *Bankruptcy and Insolvency Law of Canada, 4th Edition*, The Honourable Mr. Justice Lloyd W. Houlden, Mr. Justice Geoffrey B. Morawetz, Dr. Janis P. Sarra (Thomson Reuters: Westlaw Edge Canada) [*Houlden & Morawetz*], §7:69. Discharge Generally—General Principles.

<sup>6</sup> Subsection 168.2(2) of the BIA.

[13] The hearing of a discharge application is summary in nature. The purpose of the hearing is to determine whether the bankrupt should be discharged and, if so, whether the discharge should be suspended or a conditional order should be made.<sup>7</sup>

[14] The trustee is required to prepare a report for the discharge hearing with respect to the affairs of the bankrupt, the causes of his bankruptcy, the manner in which the bankrupt has performed the duties imposed on him under the BIA or obeyed the orders of the court, the conduct of the bankrupt both before and after the initial bankruptcy event, whether the bankrupt has been convicted of any offence under the BIA, and any other fact, manner or circumstances that would justify the court in refusing an unconditional order of discharge.<sup>8</sup> This report is known as a section 170 report.

[15] Subsection 170(5) of the BIA provides that the section 170 report is evidence of the statements therein contained for the purposes of the discharge hearing.<sup>9</sup> If a bankrupt disputes any statements contained in the 170 report, the bankrupt shall give notice in writing to the trustee specifying the statements in the report that he disputes.<sup>10</sup>

[16] The court is not bound by the section 170 report, but it is *prima facie* evidence with respect to the facts contained therein, and it should be carefully considered by the court.<sup>11</sup>

#### *Options Available to the Court*

[17] Subsection 172(1) of the BIA provides that at the hearing of a discharge application, the court may:

- (a) grant or refuse an absolute discharge;
- (b) suspend the operation of an absolute 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.

[18] However, subsection 172(2) provides that the Court shall, on proof of any of the facts referred to in section 173 of the BIA:

- (a) refuse the discharge of a bankrupt;

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<sup>7</sup> *Houlden & Morawetz*, §7:75. Procedure on Discharge.

<sup>8</sup> Subsection 170(1) of the BIA.

<sup>9</sup> Subsection 170(5) of the BIA.

<sup>10</sup> Subsection 170(6) of the BIA.

<sup>11</sup> *Crowley, Re (A bankrupt)*, 1984 CanLII 5444 (NS SC) [*Crowley*], para. 49.

(b) suspend the discharge of 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.

[19] Section 173(1) of the BIA sets out 15 facts for which discharge may be refused, suspended or granted conditionally. Proof of the facts may be given orally under oath, by affidavit or otherwise.<sup>12</sup>

[20] Once a fact under section 173 has been proven, the Court no longer has the discretion to grant an absolute order of discharge.<sup>13</sup>

[21] A discharge from bankruptcy is not a matter of right, and discharge is highly discretionary.<sup>14</sup> In exercising its discretion, the court must carefully look at the causes of the bankruptcy.

[22] Outside of section 173, the BIA provides little guidance as to how the judge who hears an application is to exercise his discretion. Case law has established a number of principles to be considered, including: (a) that every application must be determined on its own particular facts;<sup>15</sup> (b) when considering if an order should be made that involves the payment of money by the bankrupt as a condition of discharge, the court must bear in mind that he is entitled to have available for the maintenance of himself and his family a reasonable amount out of his after-acquired income;<sup>16</sup> and (c) that the court does not view with favour assignments made to avoid paying a large claim of a single judgment creditor where judgment was obtained as a result of the discreditable conduct of the debtor.<sup>17</sup>

[23] Imposing a condition that a bankrupt consent to judgment in a reasonable percentage of his unsecured liabilities under certain circumstances is not to frustrate the object of the BIA. The failure to do so in cases may offend the integrity of the discharge procedure.<sup>18</sup>

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<sup>12</sup> Subsection 172(2) of the BIA.

<sup>13</sup> *Alan Saskin*, 2025 ONSC 2501, para. 51.

<sup>14</sup> *Nagy v. Canada (National Revenue)*, 2010 SKQB 124, para. 40.

<sup>15</sup> *Scott (Re)*, 2014 ONSC 5713, para. 52.

<sup>16</sup> *Crowley*, para. 53.

<sup>17</sup> *Ibid.*, para. 54.

<sup>18</sup> *Ibid.*, para. 57.

## **Facts**

### *Statement of Affairs*

[24] Mr. Naghshbandi filed an assignment in bankruptcy on February 15, 2022. A. Farber & Partners Inc. was appointed as Trustee.

[25] In his sworn statement of affairs dated February 15, 2022, Mr. Naghshbandi listed \$96,200 of property, all of which was claimed to be exempt from seizure and inclusion in the bankruptcy estate. The property was \$1,500 for household effects, \$2,000 for personal effects, and \$92,700 for a 2020 Lincoln Navigator.

[26] In terms of liabilities, Mr. Naghshbandi listed unsecured debt of \$920,500 as being owed to Mr. Heidari and \$6,000 as being owed to Capital One MasterCard. He listed \$86,000 of secured debt as being owed to Ford Credit Canada Limited with respect to the 2020 Lincoln Navigator.

[27] Mr. Naghshbandi stated that he was unemployed and had separated from his spouse, Golaleh Tabak, in December 2017. The reason given for his financial difficulty was “Business dispute with former partner, judgment, marital separation and unemployment.”

[28] Mr. Naghshbandi also stated that he was “currently being supported by his ex-spouse as well as friends and family”, and that he “resides in a property that is owned by his ex-spouse for which he does not pay any rent”.

### *Heidari Creditors' Claims*

[29] Mr. Heidari and Mr. Naghshbandi were former business partners. They were embroiled in contentious litigation in connection with, among other things, loans that Mr. Heidari and his companies alleged were made to Mr. Naghshbandi.

[30] In the unreported Reasons for Judgment of Justice Bawden dated October 17, 2019, Justice Bawden described Mr. Naghshbandi as having obtained a degree in industrial planning and design in Iran (para. 8).

[31] Justice Bawden held that Mr. Naghshbandi “did not present as a credible witness” (para. 199), that certain parts of his testimony “appears to have been a complete fantasy” (para. 201), that he made a startling change of course in the action one week prior to trial after maintaining the opposite position for nine years (para. 115), that his evidence on one issue “demonstrated a reckless disregard for the truth” (para. 168), and that he “was not a credible witness and I find it impossible to place any serious weight on his evidence apart from a few claims made in the loan actions” (para. 203).

[32] The Reasons for Judgment also note that Mr. Naghshbandi had issued a counterclaim against Mr. Heidari that was abandoned shortly before trial (para. 39), and that Justice Bawden rejected all facts which underpinned Mr. Naghshbandi’s claim of corporate oppression (para. 222). Additionally, in Reasons for Judgment dated May 8, 2020, Justice Bawden dismissed Mr.

Naghshbandi's claims for damages for breach of contract, fraud, inducement to breach contract and unjust enrichment with respect to unpaid salary and management fees based on the factual determinations set out in his earlier Reasons (para. 3).

[33] Pursuant to the Judgment of Justice Bawden dated October 17, 2019, the Court granted judgment in favour of Mr. Heidari and against Mr. Naghshbandi in the amount of \$173,544, together with \$77,792.41 in pre-judgment interest, and costs of \$148,000.91. The judgment bears interest at 3.0% per annum.

[34] Pursuant to the Judgment of Justice Bawden dated May 8, 2020, the Court granted judgment in favour of Tarra Engineering Inc. and against Mr. Naghshbandi in the amount of \$105,810, together with pre-judgment interest of \$50,118.28 and costs of \$296,001.82. The judgment bears interest at 3.0% per annum.

[35] Pursuant to the Judgment of Justice Bawden dated May 8, 2020, the Court granted costs in favour of Tarra Engineering and Structural Consultants Inc. and against Mr. Naghshbandi in the amount of \$69,183.94. The judgment bears interest at 3.0% per annum.

[36] Mr. Naghshbandi appealed the judgments granted in favour of Mr. Heidari and Tarra Engineering Inc. In Reasons for Decision dated February 1, 2022, the Court of Appeal for Ontario dismissed the appeals and granted costs of \$20,00 in favour of each of Mr. Heidari and Tarra Engineering Inc.

[37] Each of the Heidari Creditors has filed a proof of claim in the bankruptcy proceeding. The Trustee has accepted as proven Mr. Heidari's \$467,363.19 unsecured claim, Tarra Engineering Inc.'s unsecured claim of \$200,049.60, Tarra Engineering Inc.'s preferred claim of \$296,001.82, and Tarra Engineering and Structural Consultants Inc.'s unsecured claim of \$92,888.63.

[38] The total amount of unsecured/preferred claims of the Heidari Creditors as of the date of bankruptcy is \$1,056,303.24. The only other creditor with an unsecured proven claim is Capital One MasterCard, in the amount of \$5,953.52. Ford Credit Canada filed a secured claim for the 2020 Lincoln Navigator in the amount of \$76,344.75.

### *Oppositions to Discharge*

[39] In its Notice dated September 15, 2022, the Trustee indicated its intent to oppose Mr. Naghshbandi's discharge due to his failure to make payment arrangements with the Trustee for the equity in the 2020 Lincoln Navigator, his failure to answer his undertakings given under oath during his examination held pursuant to section 163(1) of the BIA, as well as the existence of facts set out in subsections 173(1)(a) and (d) of the BIA.

[40] In its Notice dated June 17, 2022, the Heidari Creditors indicated their intent to oppose Mr. Naghshbandi's discharge due to the existence of facts set out in subsections 173(1)(a), (d), (e), (f) and (o) of the BIA, as well as due to his failure to answer his undertakings given under oath during his examination held pursuant to section 163(1) of the BIA.

*Examination of Mr. Naghshbandi*

[41] Mr. Naghshbandi was examined under oath on April 12, 2022 pursuant to section 163(1) of the BIA. During the examination, Mr. Naghshbandi confirmed that he had earned approximately \$100,000 in 2018, approximately \$102,000 in 2019, and approximately \$37,000 in 2020 while acting as a project manager for Sherwood Homes.

[42] Mr. Naghshbandi also stated that he stopped working in 2020 to take care of his son that has a medical condition, that he lived rent free in a property owned by Ms. Tabak, and that she paid for all costs related to their son and would deposit funds in a joint account.

[43] During the examination, the terms of a separation agreement dated December 11, 2017 between Mr. Naghshbandi and Ms. Tabak (the “**Separation Agreement**”) was reviewed. The Separation Agreement was said to have been entered into just under a year before the trial began in the litigation with the Heidari Creditors.

[44] During the examination, Mr. Naghshbandi said that no financial disclosure was exchanged prior to the agreement being entered into, and he did not use a lawyer in connection with the agreement. Mr. Naghshbandi testified that he did not contribute financially to the family prior to the separation from Ms. Tabak.

[45] The Separation Agreement identifies Mr. Naghshbandi as “an industrial engineer”. The agreement provides that Ms. Tabak would pay \$1,200 per month for Mr. Naghshbandi’s car expenses as long as he was responsible for their son’s transportation. The agreement also provides that the parties “are financially independent of each other and release his or her rights to spousal support from the other, now and forever”.

[46] During the examination, Mr. Naghshbandi was asked questions about two properties that were purchased by Ms. Tabak in 2020, one in Toronto (acquired in June 2020) and one in Huntsville (acquired in February 2020). Mr. Naghshbandi claimed to be living at the Toronto property without paying rent when he filed for bankruptcy. He also stated that he had nothing to do with these properties. The Separation Agreement refers to the Toronto property and says that the funds used to purchase the property came from Ms. Tabak and/or her family members.

[47] Mr. Naghshbandi also confirmed that he owns no assets, spent \$600,000 on legal fees on the litigation with the Heidari Creditors, used funds received from family to purchase the 2020 Lincoln Navigator, stopped working in 2020 to care for his son, that Ms. Tabak provided him with rent-free accommodations and made regular deposits into his bank account and made car payments on his behalf. Mr. Naghshbandi also confirmed that he had repaid a \$20,000 loan to Ms. Tabak approximately six months prior to his bankruptcy filing.

[48] Mr. Naghshbandi gave 20 undertakings during the examination, took 19 questions under advisement, and refused to answer 12 questions.

*Examination of Ms. Tabak*

[49] Ms. Tabak was examined under oath twice in connection with the bankruptcy proceeding. On the issue of the Separation Agreement, she confirmed that she did not receive financial disclosure from Mr. Naghshbandi before entering into the agreement, and confirmed that its terms were not negotiated by the parties. She also testified that Mr. Naghshbandi did not contribute financially to their family.

[50] Ms. Tabak also confirmed that she worked for Sherwood Homes as a project account and earned around \$300,000 a year in income. Subsequent to her examination she produced notices of assessment that showed total income of \$43,178 in 2015, \$169,875 in 2016, \$181,799 in 2017, \$189,762 in 2018, \$192,950 in 2019, \$202,605 in 2020, and \$302,325 in 2021.

[51] One of the issues dealt with on the examination was Ms. Tabak's ownership of the two properties. Ms. Tabak's position was that she acquired the properties using funds transferred to her from family members, which included funds coming from relatives with assets in Iran.

[52] Ms. Tabak's evidence was that Mr. Naghshbandi stopped being a full-time caretaker for their son on May 1, 2022, as she had hired someone to provide care.

*Injunction and Undertakings Motions*

[53] The Trustee brought motions for Mr. Naghshbandi and Ms. Tabak to answer undertakings, advisements and refusals from the examinations. Associate Justice Ilchenko heard the motion regarding Mr. Naghshbandi and ordered him to answer all 19 undertakings, as well as 17 of the 19 questions taken under advisement,<sup>19</sup> and all 9 requested questions, in an Order dated June 28, 2022.

[54] In August 2022, Mr. Naghshbandi and Ms. Tabak brought an urgent motion to enjoin the Heidari Creditors from accessing the answers to undertakings, advisements and refusals. One of the reasons was that Mr. Heidari would misuse the information. They relied on a text from Mr. Heidari to Mr. Naghshbandi's brother in which he referred to Mr. Naghshbandi as a "thief" and a "thug". The motion was denied by Justice Cavanagh on August 16, 2022. In his Endorsement, Justice Cavanagh did not condone the use of the aggressive and disparaging language used by Mr. Heidari but still held that there was no evidence of other texts from Mr. Heidari, and nothing that included a threat of injury that would warrant the extraordinary injunctive relief that was requested by Mr. Naghshbandi and Ms. Tabak.

[55] Justice Hushcroft of the Court of Appeal for Ontario dismissed their request for leave to appeal on November 2, 2022.

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<sup>19</sup> The remaining two under advisements were the subject of additional written submissions.

[56] The undertakings, advisements and refusals motion for Ms. Tabak was dealt with in my decision dated June 6, 2024, where answers to certain undertakings, advisements and refusals were ordered to be provided.

*Section 38 Order*

[57] The Heidari Creditors brought a motion under section 38 of the BIA to take an assignment of the rights of the Trustee to commence and prosecute certain proceedings in their own name and expense.

[58] The relief it requested included defending registrations of cautions placed by the Trustee against title to the Toronto property and the Huntsville property and bringing applications seeking declarations that Mr. Naghshbandi holds beneficial interests in those properties and taking steps to realize on Mr. Naghshbandi's interest in those properties if they are successful.

[59] The motion was granted pursuant to my Order dated May 30, 2023.

*Section 170 Report*

[60] In its section 170 report dated September 15, 2022, the Trustee stated that it has recovered \$2,700 from Mr. Naghshbandi in connection with the equity in the 2020 Lincoln Navigator, and that the total amount it still expected to receive for the equity was an additional \$6,538.25.

[61] In its supplementary report dated November 20, 2024, the Trustee stated that it had received a total of \$6,100 from Mr. Naghshbandi for the 2020 Lincoln Navigator, and that there was a balance of \$3,138.25.

[62] The Trustee reported, based on the examinations, its belief that the Separation Agreement was not accurate and prepared as a means to defeat, delay and hinder Mr. Naghshbandi's creditors, that the financial affairs of Mr. Naghshbandi and Mr. Tabak are intertwined, and that the source of monies paid to acquire the two properties are monies that can be traced to Mr. Naghshbandi or in which he has an interest or control.

[63] Mr. Naghshbandi has argued that the Trustee has made misrepresentations to the Court by aligning itself with the position of the Heidari Creditors. However, he did not specifically identify what statements in the supplementary report that he took issue with. It can be inferred that it is the beliefs of the Trustee regarding the intertwining of the financial affairs of Mr. Naghshbandi and Ms. Tabak.

[64] In his oral submissions to the Court, Mr. Delo, as representative of the Trustee, noted that Mr. Naghshbandi has paid \$7,500 to the Trustee for the equity in the 2020 Lincoln Navigator. Mr. Delo also noted that Mr. Naghshbandi continues to report having no income and has not provided any information to the Trustee regarding his status with Canada Revenue Agency.

*Expert Reports*

[65] The Heidari Creditors rely on letters from Iranian lawyer Mina Torkamani dated September 1, 2022 and September 3, 2024, that challenge the authenticity of documents provided by Ms. Tabak in support of her claim that funds she used for the purchase of the Toronto property and the Huntsville property can from Iran. Ms. Torkamani signed an Acknowledgement of Expert's Duty dated December 1, 2023.

[66] The Heidari Creditors also rely on the opinion letter of Stephen Polisuk dated September 1, 2024 that concludes that, upon review of the documentation provided by Ms. Tabak with respect to her purchase of the two properties, it could not authenticate Ms. Tabak's documents or determine the source of the funds she used for the purchase of the properties. Mr. Polisuk signed an Acknowledgement of Expert's Duty dated September 1, 2024.

[67] Mr. Naghshbandi relies on a letter from Iranian lawyer Farid Farokhzadi dated August 28, 2024 that supports Ms. Tabak's position concerning the property she received from Iran to fund her purchase of the Toronto property and the Huntsville property. The letter also suggests that there was a misuse of Ms. Tabak's Melli personal information code. Mr. Farokhzadi signed an Acknowledgement of Expert's Duty dated March 5, 2025.

*Affidavit from Mr. Naghshbandi*

[68] Mr. Naghshbandi swore an affidavit on November 11, 2024, which stated that he was unemployed, that he resides at 2049 Kate Avenue, Innisfill, Ontario, that he is separated, and that he has not acquired any new assets or liabilities since the date of his bankruptcy.

*Materials Filed by Mr. Naghshbandi*

[69] For the discharge hearing, Mr. Naghshbandi filed a compendium that was more than 2,300 pages in length. The compendium contained, among other things, five affidavits sworn by Ms. Tabak, the brief affidavit sworn by Mr. Naghshbandi described above, transcripts of hearings and cross-examinations, endorsements and decisions, and expert reports.

**Analysis**

*Position of the Bankrupt*

[70] Mr. Naghshbandi argues that he should receive an absolute discharge from bankruptcy. He says that the Heidari Creditors have engaged in "a series of serious abuse and misconduct throughout the bankruptcy proceeding". He points to the treatment of Ms. Tabak by the Heidari Creditors and their counsel, which is detailed in an affidavit she swore in response to her undertakings and refusals motion. He also argues that the Heidari Creditors and their lawyer in Iran have misused her personal information, that the Heidari Creditors and their lawyers have made repeated misrepresentations to the Court, and brought the administration of justice into disrepute through their conduct.

[71] I have presided over many case conferences and hearings in this proceeding. Like the previous litigation between Mr. Naghshbandi and Mr. Heidari, this litigation has been acrimonious.

[72] In my view, it is not the role of the Court on a discharge hearing to rule on the tactics used by litigants and their lawyers throughout the bankruptcy proceeding. The focus is on the balancing of the objectives of the BIA as detailed above. If Mr. Naghshbandi or Ms. Tabak take issue with the conduct of counsel to the Heidari Creditors, either in Ontario or Iran, there are better forums to address those issues.

*Sections 173 Facts: Section 173(1)(a)*

[73] The Heidari Creditors argue that Mr. Naghshbandi is not entitled to an absolute discharge from bankruptcy due to the existence of facts under section 173 of the BIA.

[74] Section 173(1)(a) provides as follows:

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;

[75] As set out in the Trustee's reports to the Court and in its submissions to the Court today, the Trustee has realized approximately \$7,500, and there is more than \$1.0 million in proven unsecured claims against Mr. Naghshbandi. Mr. Naghshbandi's assets are clearly not equal to 50 cents on the dollar of his unsecured liabilities.

[76] The second part of the subsection provides that there will not be a fact if the bankrupt can satisfy the Court that the fact that his assets are not equal to 50 cents on the dollar "has arisen from circumstances for which the bankrupt justly cannot be held responsible".

[77] The onus is on the bankrupt to satisfy the Court that the failure has arisen from circumstances for which he cannot justly be held responsible. Mr. Naghshbandi has tendered no evidence on this issue, although counsel to Mr. Naghshbandi asked that this requirement be waived in the circumstances of this case due to the conduct of the Trustee and the Heidari Creditors.

[78] The proven claims of the Heidari Creditors are in connection with judgments granted by this Court, and Mr. Naghshbandi's appeal of those judgments were dismissed. Mr. Naghshbandi has not directed me to any authority that stands for the proposition that the Court can find that a bankrupt is not to be justly held responsible for his status without any evidence in support thereof. Additionally, the conduct that Mr. Naghshbandi takes issue with occurred after he filed for bankruptcy. I fail to see how such conduct changes the fact that Mr. Naghshbandi has significant liabilities with very little assets.

[79] Based on the evidence before me, I hereby find that a fact exists under subsection 173(1)(a) of the BIA, as Mr. Naghshbandi's assets do not equal 50 cents on the dollar of his unsecured liabilities, and he has failed to tender evidence of why he should not justly be held responsible for that fact.

*Sections 173 Facts: Sections 173(1)(d) and (e)*

[80] Section 173(1)(d) of the BIA provides as follows:

the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities;

[81] Sections 173(1)(e) of the BIA provides as follows:

the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt's business affairs;

[82] The Heidari Creditors argue that the 173(1)(d) fact exists due to matters related to Mr. Naghshbandi's separation from his spouse Ms. Tabak. They say that there is no acceptable explanation for Mr. Naghshbandi for entering into the Separation Agreement without legal advice or financial disclosure despite the agreement providing him with minimal legal benefit.

[83] The Heidari Creditors asks the Court to draw an adverse inference due to the failure of Mr. Naghshbandi to get witnesses to testify about the Separation Agreement, and to find that the agreement was created in an attempt to defeat his creditors and reduce his ownership while maintaining his beneficial interest in the two properties.

[84] Based on my review of the evidence and the submissions of the parties, I am prepared to find that Mr. Naghshbandi has failed to satisfactorily account for a potential loss of assets in connection with the Separation Agreement. Mr. Naghshbandi's evidence is that he did not contribute financially during his marriage to Ms. Tabak and was financially reliant on her during that time. Additionally, the evidence is that Ms. Tabak was a high-income earner prior to and after their separation. Given those facts, it is questionable why Mr. Naghshbandi would waive, without receiving any benefit, all of his rights to receive a potential equalization payment and waive his right to potentially receive spousal support from Ms. Tabak.

[85] As well, the timing of the Separation Agreement, being in the year prior to the trial in the litigation with the Heidari Creditors, as well as the fact that Mr. Naghshbandi was not prepared to obtain evidence from the witnesses to the execution of the Settlement Agreement, are both concerning and lead me to infer that there was an intention to put potential assets out of reach of Mr. Naghshbandi's creditors.

[86] The Heidari Creditors also rely on two reports they obtained from Ms. Torkamani, which they say show that the documents provided by Ms. Tabak to explain the funds transferred from

Iran for the purchase of the two properties are inaccurate and do not match the Iranian land registry system. The Heidari Creditors also rely on a report obtained from Mr. Polisuk regarding the source of funds used by Ms. Tabak with respect to the purchase of the properties.

[87] Mr. Naghshbandi challenges the accuracy and propriety of the Iranian reports. He claims that the lawyer and/or the Heidari Creditors misused Ms. Tabak's personal information in Iran. Additionally, Mr. Naghshbandi says that the lawyer who provided the reports is subject to disciplinary proceedings in Iran. He has filed no evidence to support that allegation. Mr. Naghshbandi relies on his own report of an Iranian lawyer regarding the validity of the documents provided by Ms. Tabak.

[88] In my view, the issue regarding whether Mr. Naghshbandi has any beneficial interest in the Toronto property and the Huntsville property cannot be resolved at this summary discharge hearing. The Trustee has registered cautions on title to these properties, and the Heidari Creditors have expressed their intention to commence legal proceedings to challenge the ownership of those properties. They have the authority to do so under the section 38 order. The Heidari Creditors will have their opportunity to take steps to obtain recovery in connection with the two properties in those proceedings.

[89] On that basis, I am not prepared, based on the evidence before me, to make any finding that Mr. Naghshbandi has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities in connection with the two properties.

[90] With respect to a section 173(1)(e) fact, the Heidari Creditors argue that Ms. Naghshbandi has contributed to his bankruptcy with unjustifiable extravagance in living. They rely on Mr. Naghshbandi's ownership of the 2020 Lincoln Navigator, which they say is a luxury car that is way beyond the means of an unemployed individual. The Heidari Creditors point to a statement that Mr. Naghshbandi made during his examination that he bought the car simply because his son liked it. The value of the car was listed as being in excess of \$92,000 on the statement of affairs.

[91] The evidence concerning the vehicle is that Mr. Naghshbandi relied on assistance from friends and family to purchase the vehicle, and that Ms. Tabak has been making the car payments under the secured lease. Mr. Naghshbandi has also taken steps to make payments to the Trustee in connection with his equity interest in the vehicle.

[92] There is no connection between his acquisition of the vehicle and his bankruptcy. The bankruptcy was filed primarily because of the judgments obtained by the Heidari Creditors.

[93] Given those facts, I am not prepared to make a finding that Mr. Naghshbandi's bankruptcy was brought on, or contributed to, by unjustifiable extravagance in living.

[94] The Heidari Creditors also rely on the Settlement Agreement, Mr. Naghshbandi's lack of employment, and an alleged preferential payment to Ms. Tabak in its arguments for facts under section 173(1)(e).

[95] I do not see how any of those fall within this section as “rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt’s business affairs”. It is not clear on the record that Mr. Naghshbandi used his own funds for the payment to Ms. Tabak. He has testified that his brother was the source of funds paid to Ms. Tabak. Even if he did use his own funds, there is no tie between that payment and his eventual bankruptcy.

[96] Lastly, I don’t see how Mr. Naghshbandi’s lack of employment falls within the definition of “culpable neglect of the bankrupt’s business affairs”. The Heidari Creditors have put forward no case law on the interpretation of that phrase and how it could be interpreted to cover a bankrupt’s lack of employment income. Based on my review of that phrase, I interpret it using the plain meaning of the terms to cover instances where a bankrupt neglected his business which led to his bankruptcy. There is no evidence on Mr. Naghshbandi having business that he neglected which caused or led to his bankruptcy. Again, his bankruptcy is because of the significant judgments that the Heidari Creditors have against him.

*Sections 173 Facts: Section 173(f)*

[97] Section 173(f) of the BIA provides as follows:

the bankrupt has put any of the bankrupt’s creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against the bankrupt;

[98] The Heidari Creditors rely on the conduct of Mr. Naghshbandi during the litigation between them. They note that Mr. Naghshbandi abandoned a counterclaim shortly before trial, which unnecessarily drove up costs. The Heidari Creditors also point to the fact that Mr. Naghshbandi failed to answer his undertakings and the Trustee was required to spend costs to bring a motion to compel him to answer, which they were successful on. They also point to the fact that Mr. Naghshbandi brought the unsuccessful injunction motion and was unsuccessful on appeal.

[99] Based on this evidence, I am not prepared to find that the actions of Mr. Naghshbandi have constituted a “frivolous or vexatious defence”. In all of those instances mentioned by the Heidari Creditors, costs were awarded against Mr. Naghshbandi, and none of which were done on a substantial indemnity basis. Mr. Naghshbandi was entitled to take steps to defend himself in the legal proceedings. Although he was unsuccessful in those defences, I do not believe his conduct rose to the type of conduct that would be said to fall under the definition of frivolous or vexatious. If it had, the courts hearing those proceedings could have sanctioned Mr. Naghshbandi’s conduct with substantial indemnity costs, which they chose not to do.

*Sections 173 Facts: Section 173(1)(o)*

[100] Section 173(1)(o) of the BIA provides as follows:

the bankrupt has failed to perform the duties imposed on the bankrupt under this Act or to comply with any order of the court.

[101] The Heidari Creditors point to the fact that Mr. Naghshbandi failed to answer his undertakings and the Trustee had to bring the order to compel.

[102] I agree with the Heidari Creditors that by failing to answer his undertakings at first instance was a failure by Mr. Naghshbandi to perform his duties as a bankrupt. A bankrupt is required to provide full disclosure and assist a trustee in connection with his bankruptcy proceeding. Mr. Naghshbandi failed to do so. Associate Justice Ilchenko also directed Mr. Naghshbandi to answer all questions that he took under advisement and refused to answer at his examination. This means that he improperly refused to answer relevant questions that were posed to him. Again, this was a failure by Mr. Naghshbandi to provide full and frank disclosure to the Trustee.

### *Terms of Discharge*

[103] As facts have been proven under section 173(1) of the BIA, I do not have the ability to grant an absolute discharge through operation of subsection 172(2). The focus of the analysis now turns to whether the discharge should be refused, suspended, or made conditional on certain terms.

[104] The Heidari Creditors ask that the Court require Mr. Naghshbandi to pay \$125,000 as a condition to obtain his discharge. They rely on *Schira (Re)* for the proposition that the court can take into consideration a bankrupt's earning potential in assessing his ability to comply with an order of conditional discharge.

[105] In that case, the Court found that the bankrupt had remained purposely underemployed so as to avoid having to pay surplus income or to make a payment as a condition of discharge.<sup>20</sup> The bankrupt "admitted that he is underemployed and he admitted that the decision not to be paid more is partly attributable to his wish to avoid having to pay more surplus income into his bankruptcy estate".<sup>21</sup>

[106] Mr. Naghshbandi has provided no evidence concerning his employment status since he filed for bankruptcy in February 2022, other than to say that he was unemployed at the time of filing and was still unemployed in November 2024 when he swore an affidavit for this hearing. While Mr. Naghshbandi was a full-time caregiver for his son, Ms. Tabak's evidence was that she had hired someone to do such work as of May 1, 2022.

[107] Mr. Heidari was described in the Separation Agreement, which he signed, as an industrial engineer. In the litigation with Mr. Heidari, Justice Bawden described Mr. Naghshbandi as having earned a degree in industrial planning and design in Iran. Mr. Naghshbandi has shown that he has capacity to work and earn at least \$100,000 per year.

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<sup>20</sup> *Schira (Re)*, 2014 SKQB 4, para. 30.

<sup>21</sup> *Ibid.*

[108] Given Mr. Heidari's prior employment history, skills and training, and given the total lack of evidence he has put forward on any reasons for his continued unemployment, I find that he is, as Registrar Schwann held in *Nagy v. Canada (National Revenue)*, "purposefully unemployed and 'laying low' so as to avoid surplus income payments to his estate and any corresponding conditional order of discharge".<sup>22</sup>

[109] The Heidari Creditors also note that the court may impute income where the bankrupt's income is controlled by relatives.<sup>23</sup> They cite *Gotkin (Re)*, where a bankrupt was unemployed and supported by his wife without any evidence of an intention to seek employment in the future despite previously earning income.<sup>24</sup> However, in that case, the bankrupt was still married and continued to receive support from his wife.

[110] As Ms. Tabak is not legally obliged to support Mr. Naghshbandi due to the Separation Agreement, I conclude, as was the decision in *Re Ledrew*, that Ms. Tabak's income should not be taken into account and imputed to Mr. Naghshbandi for the purposes of determining the amount to be paid by Mr. Naghshbandi as a condition to obtaining his discharge.<sup>25</sup>

[111] The Heidari Creditors also rely on *Michael Katz (Re)*, where the Court held that "it would undermine the integrity of our bankruptcy system, and creditors' perceptions of the fairness of that system, if a bankrupt who showed no willingness to resume his role as a productive member of society, but instead chose to lead a very comfortable life off the largesse of his well-to-do family, nevertheless was granted an absolute discharge by this Court".<sup>26</sup>

[112] While the facts in *Michael Katz (Re)* are different than those concerning Mr. Naghshbandi, as Mr. Katz was supported by his mother, the principle taken from the case is equally applicable to this case. Mr. Naghshbandi has shown no willingness to take steps to obtain employment and contribute to the bankruptcy estate for the benefit of his creditors.

[113] In considering the amount of a conditional payment, I have taken into account the fact that Mr. Naghshbandi's bankruptcy was effectively solely the result of the Heidari Creditors obtaining judgments against him. Mr. Naghshbandi does not present to the Court as an "honest but unfortunate debtor". His financial misfortune is tied to his failure to repay loans to the Heidari Creditors, as well as significant cost awards that were issued against him by Justice Bawden and the Court of Appeal. In fact, by my calculation, more than 57% of the amount of the proven claims of the Heidari Creditors is made up of cost awards.

[114] The Heidari Creditors seek payment of \$125,000 to the Trustee. It is difficult to assess whether that amount is realistic, given Mr. Naghshbandi's lack of employment for so many years.

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<sup>22</sup> *Nagy v. Canada (National Revenue)*, 2010 SKQB 124, para. 55.

<sup>23</sup> *Re Berthiaume*, 2019 ONSC 2727, para. 27.

<sup>24</sup> *Bankruptcy of Albert Abraham Gotkin*, 2007 MBQB 2, para 15.

<sup>25</sup> *Ledrew (Bankruptcy), Re*, 2005 CanLII 23101 (ON SC), para. 25.

<sup>26</sup> *Michael Katz (Re)*, 2013 ONSC 7426, para. 78.

[115] Mr. Naghshbandi was 55 when he filed for bankruptcy and was almost 59 at the time of the discharge hearing. I believe that if he chooses to do so, he has the prospect of gainful employment ahead of him to make payment to the bankruptcy estate. However, I do believe that the amount sought by the Heidari Creditors is a bit unrealistic given his age and recent employment status.

[116] I believe a more reasonable resolution, which balances the rights of Mr. Naghshbandi, the Heidari Creditors and the integrity of the bankruptcy system, is for Mr. Naghshbandi to pay \$95,000 to the Trustee to obtain his discharge from bankruptcy. That amount is just under 10% of the total amount of the proven claims of the Heidari Creditors. I find that \$95,000 is a fair and reasonable amount for Mr. Naghshbandi to pay to his creditors so that he can obtain his fresh start.

[117] To the extent that Mr. Naghshbandi believes that this amount is overly burdensome, I note that, under subsection 172(6) of the BIA, he is entitled to bring a motion before the Court to ask that it modify the terms of the conditional order. However, such a motion may only be brought after the expiry of one year after the day on which this order was made, and Mr. Naghshbandi will be required to satisfy the Court that there is no reasonable probability that he will be in a position to comply with the terms of the order.

[118] On the issue of suspension, the Heidari Creditors requested a six-month suspension from bankruptcy during their oral submissions. Given that I expect that it will take far more than six months for Mr. Naghshbandi to make the \$95,000 payment to the Trustee, I do not see any practical benefit to imposing a suspension in this case. As a result, no order of suspension is granted regarding Mr. Naghshbandi's conditional discharge.

### **Disposition and Costs**

[119] For the reasons set out above, I have granted Mr. Naghshbandi his discharge from bankruptcy conditional on payment of \$95,000 to the Trustee.

[120] With respect to costs, the Heidari Creditors shall serve and file their written cost submissions by March 20, 2026. Mr. Naghshbandi shall serve and file his responding costs submissions by April 10, 2026. Costs submissions shall not exceed 10 pages in length, not including Cost Outlines. The submissions shall also be sent by e-mail to the Bankruptcy Court Office for my review.



Associate Justice Rappos

**DATE:** March 6, 2026