

CITATION: In The Matter of the Consumer Proposal of Marion Patricia Amos, 2025 ONSC
2948

COURT FILE NO.: BK-20-02649484-0033

MOTION HEARD: 20250516

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: In The Matter of the Consumer Proposal of Marion Patricia Amos

BEFORE: ASSOCIATE JUSTICE KAMAL

COUNSEL: Allen MacLeod, for the Administrator, D & A MacLeod Company Ltd.
Marion Patricia Amos, the Debtor, present

ENDORSEMENT

1. This is a motion brought by D. & A. MacLeod Company Ltd., as Administrator acting regarding the consumer proposal of Marion Patricia Amos.
2. The Applicant seeks an Order to revive the Consumer Proposal of Marion Patricia Amos filed on the 3rd day of June, 2020.

Background:

3. On June 2, 2020, Marion Patricia Amos (the Debtor) executed a proposal to her creditors and submitted to the Office of the Superintendent of Bankruptcy on June 3, 2020, under Part 3, Division II of the *Bankruptcy and Insolvency Act*¹ (“BIA”).

¹ R.S.C. 1985 B-3, 1

4. In May 2023, the Debtor experienced severe health issues and suffered financial consequences as a result.
5. The Debtor was in default under the Consumer Proposal and the Consumer Proposal was then annulled by the Administrator on September 7, 2023.
6. The Consumer Proposal was deemed annulled as of August 28, 2023.
7. The Debtor has requested the Administrator, D. & A. MacLeod Company Ltd., to revive the Consumer Proposal on her behalf.
8. As early as September 13, 2023, the Debtor was seeking the Administrator to take steps to revive the Consumer Proposal.
9. The Debtor provided 23 bi-monthly post-dated cheques in the amount of \$625.00 and \$900.00 respectively, and dated September 23, 2023 up to and including March 1, 2025 to the Administrator.
10. On February 14, 2025, a final lump sum payment by way of money order in the amount of \$3,575.00 was received by the Administrator, and this completed the payments as set out in the terms of the Proposal.

11. The March 1, 2025 cheque was voided.
12. The Debtor is currently 70 years old.
13. This motion was previously before Associate Justice Perron on March 10, 2025. On that date, Associate Justice Perron adjourned the motion due to insufficient materials.
14. 30-day notices requiring person to prove claim, pursuant section 149, were sent to all creditors, including secured and notice of security interest registered on title March 10, 2025.
15. The Administrator has not received any additional claims or responses to the notices.
16. The Administrator has the funds in trust to complete the proposal.
17. The Debtor has not acquired any new assets or creditors since the Notice of Annulment.

Issues:

18. These materials before me in this motion raise two issues:
 - a. What factors should the Court consider when deciding whether to revive a Consumer Proposal that was annulled?

b. What evidence needs to be led by the Applicant in support of such motions?

Applicable Law

19. [Subsection 66.31\(9\)](#) of the *BIA* authorizes an Administrator to apply to the court for an order reviving a consumer proposal. The court may grant the order if it considers it appropriate in the circumstances:

66.31(9) The administrator may at any time apply to the court, with notice to the official receiver and the creditors, for an order reviving any consumer proposal of a consumer debtor who is not a bankrupt that was deemed to be annulled, and the court, if it considers it appropriate to do so in the circumstances, may make an order reviving the consumer proposal, on any terms that the court considers appropriate.

20. An order reviving a consumer proposal is discretionary.

21. The wording of [subsection 66.31\(9\)](#) of the *BIA* does not specify the criteria for exercising its discretion.

22. The court should exercise it in compliance with the language, rationale, and purview of the applicable statutory scheme, see [*In The Matter of The Consumer Proposal of Shareef Zahrawi*, 2022 ONSC 6035](#).

Factors to be considered

23. In *Zahrawi* at [paragraph 13](#), Associate Justice Kauffman (as he then was) set out the following factors when considering whether to revive a proposal after 5 years. In addition to the timing of the application, other relevant factors include:

- a) The reason for the consumer proposal's annulment – the court is more likely to exercise its discretion where a debtor defaults for reasons beyond his or her control, such as sickness or job loss;
- b) The amount that has been paid under the proposal – the court is more likely to revive the proposal where the proposal's terms are nearly completed, and a relatively small amount remains owing; and
- c) Whether there is any creditor opposition. A large creditor's opposition would militate against granting the order compared to a creditor who was owed relatively small sums.

24. Associate Justice Kauffman stated that this list of factors is not exhaustive, and no single factor is determinative. See also [*Re Cumberbatch*, 2023 ONSC 5287](#). Both of these decisions were in relation to whether a proposal should be revived after five years.

25. In [*Little \(Re\)*, 2020 NSSC 366](#), the Court considered a set of considerations set out by Master Jean in the context of the test for leave to make a second proposal after the first proposal was annulled, in *Re Nyembo*, File number 31-1260730 (Ont. SC, unreported, March 4, 2020) and offered additional considerations.
26. Many of those factors are important to consider in the context of whether the Court should grant a request to revive a Proposal that was annulled.
27. When deciding whether to revive a consumer proposal even within five years, the Court should consider the following factors:
- a. The reasons for the annulment;
 - b. The debtor's financial circumstances and whether they have the ability to fulfill the terms of the proposal if it is revived. This includes evaluating their income, assets, debts, and overall ability to make the required payments under the consumer proposal;
 - c. Whether reviving the proposal is in the best interests of the creditors;
 - d. Whether the debtor has acted in good faith in trying to comply with the proposal in the past and whether they are now committed to adhering to the proposal terms;
 - e. The views and concerns of the creditors, including whether the existing creditors will be prejudiced;

- f. Whether the application to revive the consumer proposal was made in a timely manner, and whether reviving the proposal at the time of the application would still be practical or beneficial for all parties involved;
 - g. Whether any creditors have taken steps since the annulment of the proposal to enforce their debt; and
 - h. Whether there are new creditors and/or new assets.
28. Subsection 66.31(9) also allows this court to exercise its discretion to revive a proposal on any terms it considers appropriate, which includes that this court could exercise its discretion by amending a proposal when it is satisfied that circumstances are appropriate, see [Tavita \(Re\)](#), 2012 SKQB 42 at [paragraph 20](#).
29. Ultimately, the court has discretion and will weigh any relevant factors to determine whether reviving the proposal is appropriate, ensuring that the interests of both the debtor and the creditors are balanced fairly. The list I have provided above is also not an exhaustive list.
30. The materials before me now satisfy me that it is appropriate to revive the proposal for the following reasons:
- a. The Debtor has completed payments under the proposal;
 - b. The creditors have received notice;
 - c. The reasons given for the debtor falling into arrears are sufficient;

- d. Reviving the proposal is in the best interests of the creditors;
- e. The debtor has acted in good faith in trying to comply with the proposal in the past and whether they are now committed to adhering to the proposal terms;
- f. The creditors will not be prejudiced; and
- g. There are no new creditors and/or new assets.

Evidence Required

31. The original motion record contained an affidavit of the Administrator, which attached an email from the debtor containing an explanation as to the reason for falling into arrears. However, the email alone did not provide the required information for the Court to be satisfied that it is appropriate to revive the proposal.
32. On March 10, 2025, Associate Justice Perron adjourned the motion due to insufficient materials and asked for specific information.
33. The supplementary materials filed in response to Associate Justice Perron's endorsement of March 10, 2025 is a Supplementary Report, which includes a sworn affidavit from the Debtor, which is now more helpful.
34. [Rule 13 of the Bankruptcy and Insolvency General Rules, CRC, c 368](#) states that subject to any order of the court given in exigent circumstances, a party who makes a motion must file with the court an affidavit in support of the notice of motion or the motion.

35. It is important for the Court to have appropriate evidence, in terms of its substance and form, in order to consider this request appropriately.

36. While the Court is not bound by a rigid formula, the affidavit in support of a motion requesting an order to revive a Consumer Proposal might appropriately set out the following:

- a. Evidence of the Debtor's circumstances since the annulment;
- b. Evidence of the Debtor's current financial circumstance, including information about the debtor's current income, employment status, and monthly expenses;
- c. Evidence of the Debtors assets and liabilities, including whether the Debtor has acquired any new assets or creditors since the Notice of Annulment;
- d. Evidence of the reasons for the annulment and the reasons for falling into arrears;
- e. Evidence of the Debtor's good faith;
- f. Evidence as to how and why reviving the proposal is in the best interests of the creditors;
- g. A report from the administrator outlining their reasons for applying to revive the consumer proposal, steps taken to communicate with the debtor and creditors, and any efforts made to resolve the issues that led to the annulment;
- h. If the request includes revised terms, evidence to explain and support the request for amended terms; and
- i. Any supporting documentation.

37. The totality of the evidence before me, including the original motion record and the supplementary record, satisfy me that it is appropriate to grant this motion.

Conclusion

38. The motion to revive the Consumer Proposal of Marion Patricia Amos filed on June 3, 2020 is granted.

Associate Justice Kamal

DATE: May 16, 2025