

KING'S BENCH FOR SASKATCHEWAN
In Bankruptcy and Insolvency

Citation: **2025 SKKB 99**

Date: **2025 07 08**
File No.: **BKY-RG-00183-2024**
Estate No.: **23-3008843**
Judicial Centre: **Saskatoon**

IN THE MATTER OF THE BANKRUPTCY OF
MARK EDGAR LEMSTRA

Appearing:

Ryan Pederson	for the Objecting Creditor, Affinity Credit Union 2013
Janine Lavoie-Harding and Taylor Wilcox	for the Objecting Creditor, Canadian Imperial Bank of Commerce
Jasmine Brown	for the Trustee, BDO Canada Limited
Mark Edgar Lemstra	self-represented

JUDGMENT
JULY 8, 2025

ALEXANDER K.V. SHALASHNIY
REGISTRAR IN BANKRUPTCY

1. INTRODUCTION AND SUMMARY

[1] The bankrupt, Dr. Mark Edgar Lemstra, applies for discharge from bankruptcy.

[2] Dr. Lemstra assigned into bankruptcy on November 10, 2023. Total proven unsecured claims in Dr. Lemstra's bankruptcy stand at \$4,721,823.96.

[3] The discharge of Dr. Lemstra is opposed by the Trustee, BDO Canada Limited [Trustee], and two objecting creditors, Affinity Credit Union 2013 [Affinity]

and Canadian Imperial Bank of Commerce [CIBC] with proven unsecured claims of \$447,536.72 and \$1,952,754.17 respectively arising from Dr. Lemstra's personal guarantees of loans to Alliance Health Saskatchewan Inc. [AHS].

[4] Geolin Credit-Bail Inc., another creditor, objected to Dr. Lemstra's discharge, but did not appear at the discharge hearing. The Official Receiver examined Dr. Lemstra on May 23, 2024, neither the Official Receiver nor the Office of the Superintendent of Bankruptcy appeared in this matter.

[5] The Trustee, Affinity, and CIBC submit that numerous facts in ss. 173(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*] have been established and that Dr. Lemstra cannot be granted the absolute discharge he seeks. They also point to numerous misrepresentations Dr. Lemstra made in the lead up and during his bankruptcy. The Trustee and the objecting creditors also agree that Dr. Lemstra should be discharged after a period of 5 years during which he must report income to the Trustee and pay 50% of any surplus income above \$36,000 to the Trustee for the benefit of creditors.

[6] For the reasons that follow, the Court concludes that Dr. Lemstra is not an honest but unfortunate debtor and that facts under ss. 173(1)(a), (b), (d), and (o) of the *BIA* are established. Although he may have suffered some misfortune due to thefts and resulting tax collection efforts, he has demonstrated significant dishonesty before and during his bankruptcy. Accordingly, the Court agrees with the joint recommendation by the Trustee and the objecting creditors in granting the conditional discharge order. Dr. Lemstra is not entitled to an absolute discharge due to the proof of facts under ss. 173(1)(a), (b), (d), and (o) of the *BIA*.

2. BACKGROUND

Dr. Lemstra

[7] Dr. Lemstra is a scholar in many disciplines and an experienced businessperson in the medical field. In a recent business plan exhibited to the Affidavit of Jasmine Brown sworn February 14, 2025 [Trustee Affidavit], Dr. Lemstra described himself as follows:

Dr. Mark Lemstra has nine university degrees including a bachelor of science, a master of science in epidemiology, a master of science in public health, a master of science in physical medicine and rehabilitation, a master of business administration, a doctor of science in public health, a doctor of science in epidemiology, a PhD in epidemiology and a PhD in psychiatry. At the University of Saskatchewan, Mark is a former Adjunct Professor in Psychiatry, a former Adjunct Professor in Paediatrics and has taught numerous classes for the School of Public Health, the School of Public Policy, Academic Family Medicine, Pharmacy and the School of Business. At the University of Saskatchewan, Mark was also the former Coordinator of Behavioural Medicine at Academic Family Medicine. Mark has 58 peer review publications in medical journals and 259 peer review publications in non-medical journals.

[8] He is in his mid-50s and separated from his spouse, Nicole Lemstra. Dr. Lemstra has two adult children enrolled in post-secondary education.

Alliance Health

[9] Dr. Lemstra owned and managed a number of corporations operating numerous medical clinics in four Saskatchewan cities under the “Alliance Health” banner. He describes Alliance Health as the “largest clinic in Saskatchewan history” serving “120,000 patients”.

[10] I will generally refer to Dr. Lemstra's business as "Alliance Health" except where individual corporations comprising Alliance Health are specifically referred to in this decision.

3. FACTUAL MATRIX

[11] A discharge hearing is a summary process. However, Dr. Lemstra's discharge presents the Court with some challenge given its complexity with the number of individuals and corporations involved and the many objections by the Trustee and the creditors. Accordingly, I will outline Dr. Lemstra's version of events before moving to several broad points of contention put forward by the Trustee and the objecting creditors.

[12] The parties provided voluminous evidence in the form of affidavits and reports under the *BIA*. In considering this discharge, I rely on the Trustee Affidavit, the original and amended Trustee Reports, Dr. Lemstra's Statement of Affairs, the Affidavit of Dr. Lemstra sworn February 10, 2025 [Lemstra Affidavit], the examination transcript prepared by the Official Receiver, and the affidavits filed by Affinity and CIBC. At the discharge hearing, Dr. Lemstra also provided evidence to the Court under oath. Dr. Lemstra was also given the option of adjourning the discharge hearing to file additional affidavit evidence but declined to do so explaining that all pertinent information had been given to the Trustee.

Lemstra's Sworn Statement Upon Bankruptcy

[13] Upon bankruptcy, Dr. Lemstra completed a sworn Statement of Affairs. He declared assets of \$1,955,370 including a golf course home in the Rural Municipality of Corman Park worth \$1,899,990 [Corman Park Home] and a fully secured vehicle. He also declared unsecured liabilities of \$5,145,748.69.

[14] In the Statement of Affairs, Dr. Lemstra described the cause of his bankruptcy as follows:

Business failure, Unemployment or adverse employment change.

My financial difficulty started when my accountant stole \$945,000 from my various medical practices. The accountant also left me with line of credit debt (\$550,000) and fake payments to creditors that had to be paid off (including CRA). Every document I was given for 3.5 years was fake. The thefts were just too vast. We could never recover and then my medical practices were impacted by the Covid public health orders. My medical practices have now all closed down and I am seeking employment.

[15] Dr. Lemstra's Statement of Affairs also disclosed a number of asset dispositions including:

- (a) A 2022 pension redemption of \$161,491 used to cover losses from thefts from Alliance Health and to pay for living expenses due to "unemployment";
- (b) RRSPs of \$193,317.88 were "cashed out" in 2019 and the funds used to pay employees and creditors after thefts from Alliance Health;
- (c) That "all of my business assets were seized by business landlords"; and
- (d) Two vehicle transfers to his daughters in 2019 and 2020.

Personal Circumstances Presented by Dr. Lemstra

[16] Dr. Lemstra claims that he has been totally unable to work since he walked away from Alliance Health in September 2023 due to Asperger's Syndrome

(from youth) and chronic depression, chronic anxiety, chronic social anxiety, panic attacks, low mood, and suicidal thoughts.

[17] Despite this, he also states that he was employed as a consultant with “Sure Health” and “Schomes Holdings” as a consultant from December 2023 to January 2024 with some income. Dr. Lemstra also told the Court that during bankruptcy he attempted to apply for 46 different jobs in Saskatchewan and 4 in Calgary, Alberta, all unsuccessfully. The particulars of where he applied were not included in evidence.

[18] Since March 13, 2024, Dr. Lemstra also claims he has been on social assistance. His present total monthly income is \$945 in social assistance and he has monthly expenses of \$245.94 for food and \$300 for rent in social housing.

[19] In an application for social assistance, Dr. Lemstra obtained a diagnosis from Dr. Brad Sperling dated March 12, 2024 that was provided to the Official Receiver. This diagnosis stated that Dr. Lemstra suffered from Asperger’s Syndrome and Major Depressive Disorder with generalized anxiety, weight loss, anxiety, panic, low mood and Social Anxiety Disorder and was unable to work but could potentially return to work in time. Dr. Lemstra also stated in Court that he believes he has less than five years to live.

Additional Evidence of Dr. Lemstra

[20] Dr. Lemstra provided the following timeline in the Lemstra Affidavit and to the Court at the hearing:

- (a) That on October 21, 2020, he contacted police regarding thefts from Alliance Health. He sued the accounting firm responsible, however due to a lack of insurance the firm closed.

- (b) After the thefts were discovered, he and some of the Alliance Health companies entered a forbearance agreement with the Royal Bank of Canada [RBC] in respect of a \$550,000 line of credit and credit card debt relating to the thefts.
- (c) He resigned as a director and officer of AHS on January 1, 2023 in order to help his daughter with her mental health struggles.
- (d) Following the thefts, significant debts to the Canada Revenue Agency [CRA] existed. He directly engaged with his local Member of Parliament and the Minister of National Revenue and that a CRA official was assigned to work through the case. This official estimated the total tax debts amounted to \$276,000 and would try to set up a payment plan. A new CRA official was assigned to the file in January 2023. From January 2023 to June 2023 he worked with the new official to explain the issue of the thefts.
- (e) On July 21, 2023, RBC threatened to cancel the forbearance arrangement with all outstanding amounts immediately due.
- (f) On August 22, 2022 [*sic*], he received “warning letters” from the CRA demanding payment of \$2 million and threatening garnishment of personal and corporate accounts. In Court, Dr. Lemstra stated that he received “Notices of Assessment” from the CRA in August 2023 and advised that they were not appealed.
- (g) On August 22, 2023, Dr. Lemstra met with a representative of the Trustee and states he was advised to abandon the clinics and declare personal bankruptcy.

- (h) On August 31, 2023, he was verbally informed by the CRA that garnishment would begin.
- (i) On September 1, 2023, Dr. Lemstra notified doctors at the Alliance Health clinics about the situation and 8 physicians resigned that day with 20 notifying Dr. Lemstra of their intention to resign.
- (j) On September 2, 2023, Dr. Lemstra decided to end his life and began to make arrangements following his death. He was talked out of it by his daughter. The Chief Financial Officer [CFO] of AHS, Scott Schuler, contacted Dr. Lemstra with a plan to ensure that doctors and staff would be paid and patient care would go uninterrupted. The plan involved transferring ownership of the electronic medical records and that Scott Schuler would negotiate with lenders.
- (k) On September 14, 2023, Dr. Lemstra received a letter from RBC's legal counsel stating that the forbearance agreement had been cancelled and that all outstanding amounts were due immediately.
- (l) On or about September 18, 2023 further CRA warning letters were received by Alliance Health demanding payment.

[21] Overall, Dr. Lemstra believes that the main catalyst for his bankruptcy was the CRA warning letters and that if not for the actions of the CRA, he could have avoided bankruptcy and saved the Alliance Health enterprise.

Thefts From Alliance Health

[22] As outlined by Dr. Lemstra, a central theme in Dr. Lemstra’s bankruptcy is the assertion that a significant amount of money was stolen from various Alliance Health companies by its former bookkeepers and their subcontractors. According to Dr. Lemstra both the bookkeeper and the subcontractor committed suicide as a result.

[23] Dr. Lemstra provided the Trustee with a copy of a letter from the Moose Jaw Police Service outlining that an investigation revealed that \$945,804.91 was taken from Alliance Health between March 1, 2017 and October 31, 2019. The police investigation began on November 1, 2019.

[24] In addition, Dr. Lemstra provided the Trustee with two letter summaries of a “financial forensic engagement” conducted by Scott Schuler, then of Schuler & Pearce Accounting Inc. [Schuler & Pearce], detailing the thefts from Alliance Health.

[25] Two civil actions were commenced by various Alliance Health corporations because of the thefts: QBG-MJ-00171-2019 (defendants: Jocelyn Hanson and Jocelyn Hanson as the personal representative of the Estate of Mark Hanson and Ultimate Auto Detailing & Accessories Ltd.) and QBG-MJ-00012-2021 (defendants: NRGH Accounting Services Ltd. and Nathan Hutchinson). These actions were listed in the Interspousal Agreement.

[26] Alliance Health appears to have received \$220,000 as a settlement relating to the thefts. No evidence is before the Court that the Trustee was aware of this payment.

[27] However, Dr. Lemstra’s explanations regarding the outcome of this litigation are rather opaque and contradictory. First, in a November 2023 email exhibited to Affinity’s affidavit, Dr. Lemstra told Affinity that Alliance Health received a \$220,000 reimbursement “from the accounting firm”. Then, Dr. Lemstra told the

Official Receiver in the examination that “Mark and Jocelyn settled for a small amount but that the amount is not to be shared. I didn’t end up receiving the money.” Finally, CIBC exhibited searched indicating that judgments were registered against Alliance Health entities from QBG-MJ-00012-2021 by the defendants.

The Interspousal Agreement

[28] Dr. Lemstra and Nicole Lemstra entered into the Interspousal Agreement on or about December 22, 2021. The Interspousal Agreement listed December 1, 2020 as the date of separation. It was made with independent legal advice for both parties.

[29] In the agreement, Dr. Lemstra and Nicole each waived spousal support and agreed that child support was not payable because their two children were no longer children of the marriage as they were over 18 years of age, graduated, and employed. The Interspousal Agreement divided property with Dr. Lemstra getting his businesses, and Nicole waiving any claim to them other than 25% of any litigation settlement amounts relating to the thefts.

[30] Among other terms, the Corman Park Home was to be immediately sold with net proceeds being distributed 50% to Nicole and 50% to be held in trust by Dr. Lemstra for Kelli and Makenna Lemstra for education and maintenance until they reached 25 years of age.

[31] There has been some debate as to whether the trust created by the Interspousal Agreement is valid, notwithstanding a pre-assignment legal opinion obtained by the Trustee. However, any determination of the validity of the Interspousal Agreement or the trust are outside the scope of the discharge hearing.

The Corman Park Home

[32] The Corman Park Home appears to have been acquired by Dr. Lemstra and Nicole in July 2018. In May 2022, Nicole signed a transfer document giving Dr. Lemstra sole title to the property. The Corman Park Home sold in or about May 2024 for \$1.72 million and approximately \$235,000 in proceeds remains in trust with transaction counsel.

[33] Before moving onto the evidence relating to the objections of the creditors, a general overview of the key players and business entities involved in Dr. Lemstra's affairs is required, given their numbers.

Key Businesses and Associates of Dr. Lemstra

[34] Dr. Lemstra was the sole shareholder, director, and officer of the following corporations (unless otherwise stated) that comprised the Alliance Health enterprise:

- (a) **AHS** was incorporated on August 26, 2021. **Dr. Lemstra** was the sole director, shareholder, and Chief Executive Officer [CEO] from incorporation to January 1, 2023. On that date, **Patti Cameron** became the sole director and the Chief Operations Officer [COO], while Dr. Lemstra remained the sole shareholder and CEO. To the extent AHS owned assets, they were sold to **Schomes Holdings**.
- (b) **Alliance Wellness and Rehabilitation Inc.** (incorporated in 2013) was associated with a clinic in Moose Jaw, Saskatchewan. The corporation's assets were sold to **Schomes Holdings**.

- (c) **Alliance Health Inc.** (incorporated in 2015) was associated with a clinic in Moose Jaw, Saskatchewan. Its assets were sold to **Schomes Holdings**. The corporation's former address now appears to be that of **South Hill Medical Clinic Inc.**
- (d) **Alliance Health (Regina) Inc.** (incorporated in 2016) was associated with two clinics in Regina, Saskatchewan. Its assets were sold to **Schomes Holdings**. The corporation's former address now appears to be that of **Sure Health Regina Inc.**
- (e) **Alliance Health (Saskatoon) Prof. Corp.** (incorporated in 2017) was associated with a clinic in Saskatoon, Saskatchewan. Its assets were sold to **Schomes Holdings**. The corporation's former address now appears to be that of **Sure Health Saskatoon Inc.**
- (f) **Alliance Health (Yorkton) Inc.** [Alliance Yorkton] (incorporated in 2021) was associated with a clinic in Yorkton, Saskatchewan. According to the OIPC Report (as defined below), this entity was "taken over" by AHS on January 1, 2022.

[35] Scott Schuler became the accountant for Alliance Health in approximately 2019, and then as the CFO of AHS until September 2023. Scott Schuler is associated with the following companies:

- (a) **Schuler & Pearce** was associated with an accounting operation in Moose Jaw, Saskatchewan. It was incorporated in 2017 and dissolved on December 14, 2023. **Scott Schuler** was a director and officer since January 26, 2021 and owned shares with two other shareholders.

- (b) **Schomes Holdings** was incorporated on September 5, 2023. As of January 16, 2025, it shares the physical and mailing addresses of **Schuler & Pearce. Scott Schuler** and another individual each hold shares and are directors and officers. **Patti Cameron** was to become COO pursuant to the Sale Agreement (defined below) in September 2023.

[36] **Scott Schuler** is a shareholder, director, and officer of **Schomes Holdings** which owns all shares of the following companies. In addition, these companies proposed purchasing the assets of various Alliance Health corporations on July 15, 2023 with **Patti Cameron** and **Scott Schuler** executing the agreements as “directors” of each corporation:

- (a) **South Hill Medical Clinic Inc.** [South Hill] was incorporated July 12, 2023. As of March 1, 2024, it had the same registered address as the **Alliance Health Inc.** clinic in Moose Jaw, Saskatchewan. **Scott “Schule;r”** [*sic*] became a director and officer on July 26, 2023.
- (b) **Sure Health Regina Inc.** [Sure Health Regina] was incorporated July 12, 2023. As of November 15, 2023, it had the same physical address as the **Alliance Health (Regina) Inc.** clinic in Regina, Saskatchewan. **Scott Schuler** became a director and officer on the incorporation date. **Schomes Holdings** was the sole shareholder, with a mailing address to the attention of **Schuler & Pearce.**
- (c) **Sure Health Saskatoon Inc.** [Sure Health Saskatoon] was incorporated June 26, 2023. As of November 15, 2023, it had the same physical address as the **Alliance Health (Saskatoon) Prof.**

Corp. clinic in Saskatoon, Saskatchewan. **Scott Schuler** became a director and officer on July 12, 2023. **Schomes Holdings** is the sole shareholder, with a mailing address to the attention of **Schuler & Pearce**. However, Affinity also noted on March 6, 2024 that the shareholders at that time included **Dr. Lemstra** and his daughters **Kelli** and **Makenna Lemstra**.

[37] **Patti Cameron** represented themselves as a director of South Hill, Sure Health Regina, Sure Health Saskatoon and 582 Sask on July 15, 2023. They became sole director and COO of AHS on January 1, 2023. Patti Cameron is an officer and now a shareholder of 582 Sask after acquiring Dr. Lemstra's 10,000 Class "A" Shares (detailed below) on or about May 2, 2024.

[38] The joint venture of **Scott Schuler**, **Patti Cameron**, and **Dr. Lemstra** includes:

- (a) **582 Sask** (incorporated July 12, 2023). As of March 1, 2024, it had the same physical address as the **Alliance Health (Saskatoon) Prof. Corp.** clinic in Saskatoon, Saskatchewan, with attention to "Alliance Health". Upon incorporation, **Dr. Lemstra** was a director and officer at incorporation and held 10,000 Class A shares, **Patti Cameron** was an officer, and **Scott Schuler** held 250 Class B shares. On or about May 2, 2024, **Dr. Lemstra** transferred his shares to **Patti Cameron**. This entity also proposed purchasing part of the assets of AHS on July 15, 2023 with **Patti Cameron** and **Scott Schuler** executing the agreement each as directors on behalf of the corporation.

Objections of the Trustee and the creditors relating to Dr. Lemstra's conduct

[39] The Trustee and the objecting creditors raise concerns with respect to the conduct of Dr. Lemstra before and after his assignment into bankruptcy. These issues generally relate to five categories: (i) the true fate of the Alliance Health's assets, (ii) the use of funds loaned to AHS and certain other misrepresentations, (iii) the potential transfers of property to family members lacking sufficient explanation, (iv) the use of a corporate bank account during the bankruptcy in an undisclosed corporation, and (v) plans to open new clinics in conjunction with receiving an automatic discharge from bankruptcy. I will review the facts relating to these allegations below.

Sale of the assets of Alliance Health corporations

[40] The first issue with Dr. Lemstra's conduct concerns his honesty with respect to the true fate of Alliance Health assets. The Trustee deposed that from before Dr. Lemstra's date of bankruptcy to January 3, 2025, he maintained that the business assets were seized by landlords. Dr. Lemstra also included this assertion in his sworn Statement of Affairs.

Discovery of the undisclosed asset sale

[41] However, on January 2, 2025, Affinity provided the Trustee with a copy of an Investigation Report dated April 22, 2024 [OIPC Report] from the Office of the Saskatchewan Information and Privacy Commissioner [OIPC] under *The Health Information Protection Act*, SS 1999, c H-0.021.

[42] The OIPC Report was commenced after 82 boxes of patient records were dropped off to the Sure Health Regina location by a recycling company. These records originated from a deceased physician in Yorkton, Saskatchewan who practiced with Alliance Yorkton. Because Alliance Yorkton was no longer in business, it was unclear who was responsible for the records.

[43] The OIPC found that Schomes Holdings, as the owner of Sure Health Regina, was responsible for the records because it had acquired AHS on or about September 1, 2023.

[44] After discovery of the OIPC Report, Dr. Lemstra advised the Trustee that the assets of Alliance Health were, in fact, sold and provided the Trustee with a copy of a “Purchase of Business Agreement” dated September 2, 2023 [Sale Agreement].

[45] The Sale Agreement transferred all “Clinics and their Assets” of Alliance Health (Regina) Inc., Alliance Health (Saskatoon) Prof. Corp., Alliance Health Inc., AHS, and Alliance Wellness and Rehabilitation Inc. to Schomes Holdings for the sum of \$1 plus a consultancy fee payable to Dr. Lemstra of \$15,000 in September and October 2023 plus any additional contract work at \$100 per hour thereafter. Schomes Holdings would also assume other liabilities going forward.

[46] The Sale Agreement also contained a provision that Patti Cameron, the COO of AHS would become the COO of Schomes Holdings and that Scott Schuler, the CFO of AHS would become a director and CEO and COO [*sic*] of Schomes Holdings.

[47] The Trustee stated that after January 3, 2024, Dr. Lemstra changed his story and took the position that the assets were sold for \$1 to ensure that someone had custody and control of the patient records or, in other words, for “privacy reasons”. Dr. Lemstra made these assertions in Court and further added that Scott Schuler’s plan to take over the clinics reflected his magnanimity in the face of Dr. Lemstra’s challenging personal circumstances at the time.

[48] However, contrary to Dr. Lemstra’s explanation, in the OIPC Report, Schomes Holdings is said to have taken the position that the asset purchase agreement specifically excluded an obligation to take responsibility for patient medical records.

Use of Affinity and CIBC Loans and Misrepresentations to the Creditors

[49] In addition to the undisclosed sale of corporate assets, Affinity has also raised concerns that Dr. Lemstra caused AHS to fail to use loans made for the purposes they were made and made several misrepresentations in the various applications for financing. This includes the promise that AHS would amalgamate with Alliance Yorkton, Alliance Health (Saskatoon) Prof. Corp., Alliance Health (Regina) Inc., Alliance Health Inc., Alliance Wellness and Rehabilitation Inc. [Regional Corporations].

[50] CIBC also alleges that Dr. Lemstra and AHS failed to provide CIBC with a first charge security position as stated in the lending documents following the 2023 re-advance. According to CIBC, this would have required that AHS and other Alliance Health corporations controlled by Dr. Lemstra pay out RBC indebtedness, which was not done. CIBC stated that Dr. Lemstra promised this would happen in 2021 but failed to do so at that time as well.

[51] According to the objecting creditors, these actions not only indicate Dr. Lemstra's dishonesty but also increased his personal liability under his personal guarantees.

[52] The Trustee provided evidence that Dr. Lemstra represented that the Regional Corporations were amalgamated with AHS in 2022, but that the Trustee received no evidence the promised amalgamations ever actually occurred.

Borrowing by AHS

[53] In December 2021, AHS appeared to be very active in seeking financing from Affinity and CIBC at the same time. The lending documents for the \$350,000 loan and the \$100,000 line of credit from Affinity were executed on December 16, 2021 [Affinity Loans]. The following day, on December 17, 2021 many documents were

executed by AHS entities in respect of CIBC's original tranche of financing. This series of loans, combined with others are what the objecting creditors allege were part of a "borrowing binge" by AHS directed by Dr. Lemstra.

Affinity Loans

[54] The \$350,000 loan from Affinity was advanced on May 18, 2022. The Affinity Loans were secured by a general security agreement [GSA] on the assets of AHS and through two personal guarantees of Dr. Lemstra dated May 17, 2022 limited to \$350,000 and \$100,000 respectively, plus solicitor and client costs relating to enforcement and collection [Affinity Guarantees].

CIBC Loans

[55] Following the initial loans in December 2021, CIBC re-advanced a number of loans to AHS pursuant to a Credit Agreement dated January 28, 2023, as amended, totalling just over \$2 million [CIBC Loans]. The various credit facilities were provided for a number of purposes including general usage, leasehold improvements, and medical equipment. Dr. Lemstra also guaranteed indebtedness owing to CIBC through an unlimited personal guarantee dated January 30, 2023 [CIBC Guarantee].

[56] To be clear, both Affinity and CIBC are not secured creditors of Dr. Lemstra. They appear to be secured creditors of AHS and have faced issues with enforcing their security. Each of their personal guarantees contain provisions to the effect that recourse under security need not be exhausted before calling on the guarantee.

Purpose of Affinity Loans

[57] As part of the lending application, Dr. Lemstra provided a business plan to Affinity proposing that the Regional Corporations would amalgamate with AHS after

it was created. Four new companies and other ventures would be added to AHS. The Affinity Loans were specifically requested to pay for tenant improvements and to pay off debt owing by the Regional Corporations.

[58] Dr. Lemstra also provided financial statements for AHS based on the “amalgamated” financial data of six separate clinics. Other financial statements prepared by Schuler & Pearce for some of the Regional Corporations were provided to Affinity.

[59] Dr. Lemstra also provided a Consumer Profile and Personal Net Worth Statement to Affinity dated December 7, 2021 [2021 PNW Statement]. In it, he disclosed the income of his spouse, Nicole, as well as his income which he stated was “\$10 million/year”. Nicole also appeared to provide her income and Social Insurance Number as the form stated that it must be provided and acknowledged by the spouse. He also valued 6 medical clinics of AHS at \$10,000,000 and estimated the equity in the Corman Park Home at \$1.4 million.

[60] Affinity provided evidence that it was under the impression that AHS would own the assets of the Regional Corporations after the amalgamation and then secured the loans with the GSA on the assets of AHS.

Use of Affinity Funds

[61] After the \$350,000 loan was advanced to the AHS’ account on May 18, 2022, Affinity is of the view that the only transaction in the amount of \$18,326.10 could be said to have aligned with the purposes of the loan. The remaining withdrawals from the account by cheque are viewed with suspicion by Affinity:

- (a) \$88,000.00 to Nicole Lemstra (May 18, 2022)
- (b) \$33,000 to Dr. Lemstra (August 2 and September 1, 2022)

- (c) \$255,000 to AHS accounts (June 13, August 2, September 1, September 8, 2022)

[62] No deposits were made to the account and the result was that the \$350,000 loan was fully availed within four months leaving an overdrawn line of credit associated with the AHS account. In addition, the only payments received on the \$350,000 loan came from the Affinity line of credit.

[63] None of these expenditures have been explained by Dr. Lemstra.

Disclosures by Dr. Lemstra and AHS

[64] After Affinity provided financing to AHS, Dr. Lemstra attempted to borrow more money from Affinity. As part of those attempts he provided certain information that Affinity now asserts impugns his honesty.

December 2022 Financing Request

[65] In December 2022, Dr. Lemstra applied to Affinity for a \$50,000 loan for home renovations. Affinity declined to provide financing, but Affinity did receive a number of statements and documents from Dr. Lemstra.

[66] These included statements that led Affinity to believe that the promised amalgamation of the Regional Corporations with AHS had been completed. On December 22, 2022 Dr. Lemstra told Affinity that Alliance Wellness and Rehabilitation Inc. and Alliance Yorkton were “now part of Alliance Health Saskatchewan” and on January 6, 2023, Dr. Lemstra responded to a question of which companies were “consolidated” into AHS with “Alliance Health Inc, Alliance Wellness and Rehabilitation Inc., Alliance Health Regina Inc, Alliance Health (Saskatoon) Prof Corp, Alliance Health Yorkton Inc.”

[67] Dr. Lemstra also provided a number of financial statements of AHS prepared by Schuler & Pearce indicating that as of December 31, 2022 [2022 Financial Statements] the company had assets of \$4,538,000; liabilities of \$654,116, long-term liabilities of \$832,133, paid all the debts of the Regional Corporations in the amount of \$295,000, and acquired the assets of the Regional Corporations for no money, but that those assets had a fair market value of \$2,081,549. Affinity was also provided with an unsigned 2022 tax return for AHS showing a net income of \$1,498,566.00.

Financing Request for a Corporate Asset Sale in July 2023

[68] In or about July 2023, Dr. Lemstra requested further financing from Affinity in respect of four asset sale agreements dated July 15, 2023 between AHS and South Hill, Sure Health Regina, 582 Sask, and Sure Health Saskatoon for an aggregate purchase price of \$450,000. Each of the agreements were executed by Dr. Lemstra on behalf of AHS and Scott Schuler and Patti Cameron on behalf of each of the prospective purchasers. It is unclear why the vendor would have requested financing for those transactions. Affinity did not provide the requested financing.

[69] As part of this financing request, Dr. Lemstra also provided Affinity with Consumer Profile and Personal Net Worth Statements from Dr. Lemstra's adult children. In the Personal Net Worth Statement of Makenna Lemstra dated July 20, 2023 she stated that she was 20 years old, a third year nursing student, employed by Alliance Health making \$3,200 per month. She disclosed assets of \$892,108, including \$2,100 cash, a Dodge truck valued at \$70,000 and three equestrian horses listed with values of \$650,000, \$150,000 and \$20,000 respectively.

Potential Asset Transfers of Property to Family Members Lacking Sufficient Explanation

Equestrian Horse Assets Lacking a Coherent Explanation

[70] Arising from this disclosure of the above information, Affinity now questions how Makenna acquired \$820,000 in equestrian horses while making a gross income of \$3,200 per month. Affinity believes that a horse or horses (or funds relating to horses) were potentially transferred to Makenna by Dr. Lemstra.

[71] In the examination before the Official Receiver, Dr. Lemstra stated that a horse was initially purchased for his daughter in 2018 and cost \$5,000. He stated that the horse was in his daughter's name and that he contributed \$4,500 while Nicole put in \$500. The horse was sold in 2023 to a family in British Columbia, with no proceeds being received. Dr. Lemstra also stated that a second horse was purchased in 2023, but that he had no involvement in the transaction as his youngest daughter used a sponsor to assist with the sale.

[72] However, Dr. Lemstra told the Trustee on November 4, 2024 that no funds of his or AHS were used to purchase a horse for his daughter, that the horse was purchased through a sponsor and was sold after getting injured.

[73] Contrary to the above statements, Affinity points out that it had, in fact, lent Dr. Lemstra \$50,000 personally to purchase an equestrian horse pursuant to an agreement dated November 21, 2018 and that a horse was purchased following the loan. Being within the five-year retrospective period, Affinity takes issue with Dr. Lemstra's disclosure in his Statement of Affairs which fails to mention that either the funds to purchase the horse or the horse itself were transferred from Dr. Lemstra to Makenna or some other person.

[74] To be clear, the Court is not making a determination regarding any fraudulent conveyances regarding equestrian horses. However, such an application may

be eventually forthcoming from the creditors.

Dr. Lemstra's Dealings with Corman Park Home and Other Real Property

[75] In addition to the above disclosure issues, Affinity also raised concerns with respect to a series of property transactions. This series of transactions resulted in the dissipation of any equity Dr. Lemstra had in the Corman Park Home.

[76] Dr. Lemstra's sworn Statement of Affairs does not mention any property transfers to Nicole Lemstra. However, the evidence before the Court indicates the following transactions were made in what Affinity characterizes as an "equity payout agreement":

- (a) On May 12, 2022, Nicole signed a number of documents including a Transfer Authorization transferring title to the Corman Park Home to Dr. Lemstra solely.
- (b) AHS paid Nicole \$88,000 on or about May 18, 2022.
- (c) RBC registered a new mortgage on title to the Corman Park Home on May 18, 2022 with a face value of approximately \$500,000 more than the previous mortgage.
- (d) Shortly after receiving the \$88,000, Nicole obtained title to a property in Saskatoon on May 24, 2022 valued at \$519,000 and secured by a mortgage of \$119,000, meaning that approximately \$400,000 of equity was available in the property.
- (e) Mortgage statements from RBC indicate that the mortgage balance on the Corman Park Home grew by approximately \$600,000

between December 2022 and November 2023.

[77] Dr. Lemstra has provided a number of explanations for these transactions. They include:

- (a) In the examination before the Official Receiver, Dr. Lemstra stated that "My wife left and I had to give her \$550,000.00 as part of the initial settlement".
- (b) In Dr. Lemstra's Affidavit, he states that he entered into an agreement to borrow as much as possible from his portion of the equity and allocate it to Nicole for spousal support.
- (c) In Court, Dr. Lemstra confirmed that the payment was made to Nicole and that it was done pursuant to an unwritten agreement outside the Interspousal Agreement, but noted he had difficulty characterizing it as a non-lawyer.

[78] Given the terms of the Interspousal Agreement, Dr. Lemstra's explanations make little sense. Not only was property divided and spousal support waived, but Nicole also waived any entitlement to business assets (other than a quarter of settlement amounts) and then proceeded to receive \$88,000 of AHS funds.

Dr. Lemstra's Use of the 582 Sask Bank Account During Bankruptcy

[79] Affinity also raised concerns regarding the use of the bank account of 582 Sask held at Affinity. Dr. Lemstra failed to disclose his ownership of shares in 582 Sask on his sworn Statement of Affairs.

[80] Affinity provided numerous bank statements and other documents from November 1, 2023 to April 26, 2024. During that time those statements reveal at least 141 separate transactions at liquor retailers, 120 restaurant transactions, and 70 grocery

or convenience store transactions, as well as the following specific charges:

- (a) Churchill Dog Groomers Saskatoon (November 24, December 22, 2023, February 15, 2024);
- (b) Home Depot (November 6, 2023);
- (c) Riide Saskatoon (November 4 & December 22, 2023);
- (d) Underwood Towers Limited Partnership – a cheque dated November 14, 2023 in the amount of \$3,800 for “November Rent” including a unit number and “Lemstra” at the top of the cheque and in the memo portion;
- (e) SaskEnergy (November 15, 2023, a cheque including Dr. Lemstra’s home address in the “Memo” portion, and January 3, 2024);
- (f) SaskPower (November 17, 2023, a cheque including Dr. Lemstra’s home address in the “Memo” portion, and January 3, 2024);
- (g) SaskTel Mobility (January 3, February 24, 2024);
- (h) Greenbryre Utility (two cheques including Dr. Lemstra’s home address in the “Memo” portion both dated November 15, 2023);
- (i) Shaw (November 10, 2023);
- (j) BDO Canada Limited (November 10, 2023);
- (k) McNally Robinson (December 3, 2023);
- (l) Anytime Fitness (December 12 and 27, 2023; January 8 and 22,

February 5 and 21, March 4 and 18, and April 1, 2024);

- (m) Leos Barbershop (December 19, 2023; February 15 & April 23, 2024);
- (n) E-transfer to Kelli Lemstra (January 3, 2024); and
- (o) Early's Farm Garden (January 18, 2024).

[81] The statements provided by Affinity reveal the following depositors to the 582 Sask account:

- (a) Makenna Lemstra: \$3,200.
- (b) Kelli Lemstra: \$200.
- (c) Entitles controlled by Scott Schuler:
 - i. Schuler Pearce: \$12,500, Schomes Holdings: \$6,859.73, South Hill: \$3,000, and Sure Health Saskatoon: \$1,000.
- (d) Unknown entities: "Scottfree Account": \$100.

[82] Dr. Lemstra does not deny the charges are his, however he takes the position they were solely for business. When Affinity relayed its concerns to the Trustee, Dr. Lemstra told the Trustee in an email appended to the Trustee Affidavit that the 582 Sask account that "the business expenses were to reimburse me for lunches at a restaurant (food), business meetings at my home (food and alcohol/drink), business computer expenses, business printer expenses, business phone expenses, business internet expenses, business mileage, business gas, business head office expenses and so on."

Opening of New Businesses and the Alleged Scheme to Defeat Creditors

[83] Shortly after Dr. Lemstra applied for social assistance, the Trustee became aware of two business plans Dr. Lemstra was planning to implement following his automatic discharge. According to the Trustee, on April 11, 2024, in advance of a financial counselling session, Dr. Lemstra sent two business plans to the Trustee that he stated in an email that he was “working on to start immediately after [his] discharge on Sept 1, 2024”. One of the plans proposed the creation of a Healthcare Cost Solutions Plan to source medical supplies from Mumbai, India [Healthcare Cost Solutions Plan]. The other plan proposed the creation of mental health treatment facilities [Mental Wellness Plan].

Healthcare Cost Solutions Plan

[84] The Healthcare Cost Solutions Plan sought initial investment of \$350,000. It stated that Dr. Lemstra engaged the services of a former Strategic Advisor and Senior Consultant for India to the Premier of Saskatchewan. The plan also highlighted that on June 17 and 18, 2023, Dr. Lemstra met with the High Commissioner and Consul General of India to Canada. On September 21, 2023, Dr. Lemstra met with the Minister of Health for Saskatchewan. After that meeting, the plan (exhibited to the Trustee Affidavit) stated that Dr. Lemstra met with “the Minister of Mental Health, Senior Health and Rural Health, the CEO of the Saskatchewan Health Authority, two Executive Directors of the Ministry of Health, the CEO of all Catholic hospitals and long term care facilities, the CEO of 3S Health, the Vice President of Rexall Drugs and many others”. Between July 2023 and November 2023, the plan continued to be built with Dr. Lemstra pricing out various supplies and the consultant travelling to India from September 29 to November 7, 2023 to meet with 19 companies. The plan stated that Dr. Lemstra was to visit India in June 2024 and had a visa facilitated by the consultant. The Healthcare Cost Solutions Plan estimated profitability within 4 months and net

income of approximately \$60,000 per month within 9 months.

[85] Based on the contents, it appears that the Healthcare Cost Solutions Plan was written sometime after November 7, 2023.

Mental Wellness Plan

[86] The Mental Wellness Plan sought to create an in-patient and out-patient clinic in Saskatoon for mental health and addictions treatment seeking a \$300,000 initial investment. While the Mental Wellness Plan had no date, its contents indicate that it was written sometime after June 2022.

[87] For the in-patient centre, monthly net income was estimated at \$175,250 and net income of \$78,000 per month for the out-patient centre.

Mental Wellness Agreement

[88] In furtherance of the Mental Wellness Plan, the Trustee also received an agreement dated April 14, 2024 between Dr. Lemstra and Patti Cameron in respect of a mental health and addiction centre [Mental Wellness Agreement]. While the Mental Wellness Agreement is between Dr. Lemstra and Patti Cameron, Dr. Lemstra also appears to have signed the agreement on behalf of 582 Sask.

[89] The Mental Wellness Agreement stated that a centre was to be owned by 582 Sask. Initially the 582 Sask shareholdings consisted of 10,000 Class A shares owned by Dr. Lemstra, 250 Class B shares owned by Scott Schuler. In April 2024, the shareholdings were to be revised to have 5,000 Class A shares owned by Dr. Lemstra and 5,000 Class A shares owned by Patti Cameron (as well as having Patti Cameron be the director and officer). The physical business was to open on October 1, 2024 in Saskatoon with the second business opening on November 1, 2024 in Corman Park. A third business was also listed as importing medical supplies and equipment. 1941574

Alberta Ltd. [1574 Alberta] was to lend \$250,000 for startup costs.

[90] As part of the Mental Wellness Agreement, Dr. Lemstra agreed to devote all of his ordinary working time to carrying on the business as its CEO overseeing all clinical, operation and administrative functions. Dividends were to be paid according to the shareholdings. The terms of Dr. Lemstra's employment included a minimum of 40 hours of work per week and an increasing compensation structure:

- (a) \$0 per month between September 1 to 30, 2024;
- (b) \$4,000 per month from October 1 to December 31, 2024;
- (c) \$6,000 per month from January 1 to August 31, 2025; and
- (d) \$10,000 per month after August 31, 2025 provided billings were at least \$100,000 per month.

[91] The Mental Wellness Agreement (exhibited to the Trustee Affidavit) also contained a clause that referenced Dr. Lemstra's bankruptcy:

9.02 ...In the event that Mark Lemstra's personal bankruptcy (November 10, 2023 to August 10, 2024) interferes with the new business in any way, Mark Lemstra's 5,000 Class A Shares will be seized by Patti Cameron and the process will begin to close down the business. Patti Cameron will be appointed Chief Executive Officer with sole signing authority and close down the business. In the event that Mark Lemstra's personal bankruptcy interferes with the new business in any way, the business must fully refund the \$250,000 business loan to 1941574 Alberta Ltd. In order to prevent business interruption, Mark Lemstra emailed the corporate business plan to Danielle Lucas (BDO Insolvency Counsellor) on April 10, 2024. As well, Mark Lemstra had a mandatory BDO insolvency education session with Danielle Lucas on April 12, 2024 whereby the new business plan was discussed and financial forecasting for Mark Lemstra (based on the new business) was also discussed. It is based on these events that this Agreement is being signed on April 14, 2024.

[92] The Mental Wellness Agreement came to the attention of Affinity in late April 2024. On or about April 26, 2024, Dr. Lemstra attended an Affinity location where he attempted to deposit a \$250,000 cheque to the 582 Sask account from 1574 Alberta. Affinity then placed a hold on the account and advised the Trustee of the situation on May 2, 2024, requesting action be taken.

[93] The investment funds were eventually returned to 1574 Alberta and the Trustee advised Affinity that it was of the view that the shares of 582 Sask did not have any value as of the date of Dr. Lemstra's bankruptcy.

[94] The Court was provided with Corporate Registry documents showing that Dr. Lemstra had transferred his 10,000 Class A shares to Patti Cameron on May 2, 2024.

[95] Affinity brought these matters forward and allege that they indicate that Dr. Lemstra was involved in a scheme to defeat creditors and to reduce his surplus income obligations to zero.

[96] Dr. Lemstra alleges that Affinity violated the stay of proceedings by putting a hold on the 582 Sask account, attempted to have him arrested, and are acting in bad faith. However, I do not see these allegations as having merit and will not consider them.

4. ISSUES AND POSITIONS

Issues

[97] The issues before the Court are as follows:

- (a) Issue 1: Based on proof of s. 173(1) facts and Dr. Lemstra's conduct generally, is Dr. Lemstra an honest, but unfortunate debtor?

- (b) Issue 2: If not, what is the appropriate use of the Court's discretion in Dr. Lemstra's discharge?

Positions of the Trustee and the Objecting Creditors

[98] Both the Trustee and the objecting creditors allege that multiple facts under ss. 173(1) of the *BIA* have been established by the evidence that preclude Dr. Lemstra from receiving an absolute discharge. The Trustee submits that facts under ss. 173(1)(a), (c) and (e) of the *BIA* have been established. The objecting creditors allege that facts under ss. 173(1)(a), (b) and (d) have been established.

[99] The Trustee and the objecting creditors are in agreement that a conditional discharge order is appropriate providing for a five-year reporting period for any income including but not limited to salary, dividends, retained earnings. In addition, they agree that Dr. Lemstra should pay 50% of any surplus income above \$36,000 to the Trustee for the benefit of creditors based on his income during the reporting period.

Position of Dr. Lemstra

[100] Dr. Lemstra believes that he deserves an absolute discharge from bankruptcy and that his discharge should have occurred some time ago. He submits that he acted in good faith in making his assignment and had done all that the Trustee required of him.

[101] Given his medical conditions, a five-year conditional discharge term would not allow him to recover medically and allow for a graduated return to work. Dr. Lemstra submitted in Court that if a conditional discharge order was granted requiring payment of his surplus income, he would be medically unable to work due to what he called "an Aspergers thing or common sense".

[102] Dr. Lemstra also makes a number of arguments relating to the bad faith of the objecting creditors in relation to their failure to realize on secured corporate assets and their opposition to the distribution provisions of the Interspousal Agreement. While he does not take issue with Affinity's standing in his discharge hearing, he argued that only they filed their Notice of Opposition within the time frame in ss. 168.2(1)(b) of the *BIA* and that CIBC lacks standing to object to his discharge. He also takes issue with the conduct of the Trustee in what he views as a delay in arranging for the discharge hearing. Finally, Dr. Lemstra seeks a cost award against the objecting creditors in favour of Nicole and his two daughters.

[103] Many of Dr. Lemstra's objections are outside the scope of this discharge hearing and will only be considered as they relate to the ss. 173(1) facts before the Court and the terms of Dr. Lemstra's discharge. The issues of creditor standing and delays in arranging for the discharge hearing lack merit and will not be considered by the Court based on *Anstead Estate*, 2002 SKQB 238, 35 CBR (4th) 1 (affirmed 2002 SKCA 138, 41 CBR (4th) 163, additional reasons at 2003 SKCA 7, 41 CBR (4th) 167) and *Re Gaklis (A Bankrupt)* (1984), 136 APR 52 (NSSC).

5. LAW

Principles Applicable to Discharge

[104] The Supreme Court of Canada recognized that the broad purposes of the *BIA* are (i) the equitable distribution of assets to creditors and (ii) the financial rehabilitation of the debtor.

[105] The rehabilitative power of discharge allows an honest but unfortunate debtor relief from the crushing burden of their debts and the chance to start their financial life afresh.

[106] Grounded in these broad purposes of the *BIA*, when faced with discharge applications, courts will strike a balance among the interests of the creditors, the interests of the bankrupt, and the integrity of the bankruptcy system (*Poonian v British Columbia (Securities Commission)*, 2024 SCC 28 at paras 21-24, 495 DLR (4th) 1 [*Poonian*]).

Statutory Authority and Discretion

[107] The Court has wide discretion when considering applications for discharge as set out in ss. 172(1) of the *BIA*:

Court may grant or refuse discharge

172 (1) On the hearing of an application of a bankrupt for a discharge, other than a bankrupt referred to in section 172.1, the court may

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

Powers of court to refuse or suspend discharge or grant conditional discharge

(2) The court shall, on proof of any of the facts referred to in section 173, which proof may be given orally under oath, by affidavit or otherwise,

- (a) refuse the discharge of a bankrupt;
- (b) suspend the discharge for 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.

...

[108] As stated in ss. 172(2), where a fact under ss. 173(1) is established on a balance of probabilities, the Court's statutory discretion becomes more limited as it is unable to grant an absolute discharge (*BTA Real Estate Group Inc. v Kaiss*, 2025 SKCA 24 at paras 55 and 56 and *Tedford (Re)*, 2015 SKQB 167 at paras 10-11, 477 Sask R 135).

Discharge Considerations in the Jurisprudence

[109] A rich caselaw exists to help guide the Court in the application of its discharge powers under the *BIA*. These are oft-cited, including recently by Elson J. in *Keep (Re)*, 2024 SKKB 110 at para 44 [*Keep*]:

[44] In construing the facts stipulated in s. 173, one must adopt a purposive approach to their application to a given case. This requires a court to bear in mind overall purpose of a discharge from bankruptcy, irrespective of whichever procedural framework is engaged. Three cases, not infrequently cited in this regard, are *Re: Posner* (1960), 3 CBR (NS) 49 (Man QB), *Re: Raftis* (1984), 53 CBR (NS) 19 (Ont SC) and *Westmore v McAfee*, [1988] 3 WWR 593 (BCCA). All three authorities were helpfully referenced in this Court by Registrar Thompson in *Re Ross*, 2014 SKQB 352, 462 Sask R 110 [*Ross*]. There, she described the relevant objectives of the Canadian bankruptcy system at para. 3:

3 The bankruptcy system has a few objectives: it is designed to relieve the honest but unfortunate debtor from the crushing burden of his debts so that he can be rehabilitated and become a contributing member of society; it is also designed to ensure that the bankruptcy creditors receive an equitable distribution from the bankruptcy estate. Both of these objectives are to be weighed in reference to the integrity of the bankruptcy system. In assessing the appropriate balance between these interests, the courts have identified a number of

guiding principles. The British Columbia Court of Appeal, cited a number of these principles in para 22 of *Westmore v. McAfee* (1988), 49 D.L.R. (4th) 401 (B.C. C.A.) [*McAfee*]. Writing for the court, Locke J.A. noted as follows:

22. I would wish to adopt, without referring to the authorities other than *Re: Posner* (1960), 3 C.B.R. (N.S.) 49, a statement of Anderson, J. in *Re Raftis* (1984), 53 C.B.R. (N.S.) 19 where he gave a compendious expression of the sometimes conflicting principles of discharge extracted from the cases:

1. In considering the question of discharge, the Court must have regard not only to the interests of the bankrupt and his creditors, but also to the interests of the public ...

2. The Legislature has always recognized the interest that the State has in a debtor being released from the overwhelming pressure of his debts, and that it is undesirable that a citizen should be so weighed down by his debts as to be incapable of performing the ordinary duties of citizenship ...

3. One of the objects of the *Bankruptcy Act* was to enable an honest debtor, who had been unfortunate in business, to secure a discharge so he might make a new start ...

4. The bankruptcy courts should not be converted into a sort of clearing-house for the liquidation of debts irrespective of the circumstances under which they were created ...

5. The success or failure of any bankruptcy system depends upon the administration of the discharge provisions of the Act ...

6. The Court is not to be regarded as a sort of charitable institution ...

7. It is incumbent upon the Court to guard against laxity in granting discharges so as not to offend against commercial morality. It is nevertheless the duty of the Court to administer the Bankruptcy Act in such a way as to assist honest debtors who have been unfortunate ...

8. The discharge is not a matter of right ...

[Emphasis added] [Emphasis in original]

[110] A more contemporary phrase describing the notion that bankruptcy Courts are not merely a “clearing-house” for debts irrespective of a bankrupt’s circumstances is that the bankruptcy system is not a “fiscal car wash”, to use the words of Fitzpatrick J. in *Montalban (Re)*, 2013 BCSC 683 at para 17, 100 CBR (5th) 167 [*Montalban*].

A Duty of Honesty

[111] As is often stated, discharge from bankruptcy is not a right. The discharge provisions of the *BIA* and the caselaw are infused with a requirement that a bankrupt seeking discharge must be both honest and unfortunate (*Bank of Montreal v Giannotti* (2000), 197 DLR (4th) 266 (Ont CA) [*Giannotti*]).

[112] The Court is required to consider the circumstances and conduct of a bankrupt seeking discharge. This necessitates the duty for a bankrupt to be honest in the lead up to and during the bankruptcy process.

[113] Part of being honest as a bankrupt is ensuring that the trustee is provided a transparent picture of a bankrupt’s affairs. Trustees have a critical statutory duty in assisting the Court with determining facts and making recommendations to the Court

in discharges. Accordingly, the Courts expect bankrupts to be forthright. Registrar Short in *Re Bigioni*, 2014 ONSC 1147, 12 CBR (6th) 254 put it well:

[50] Any debtor seeking the assistance of this court needs to come not only with clean hands but with open files. The court needs to be satisfied that it can trust the information before it is a bankrupt wants to obtain assistance from the Court.

Conduct, Culpability, and Commercial Morality

[114] The conduct, culpability, and commercial morality discussed in *McAfee*, (*Re*), [1988] 3 WWR 593 (BCCA) and *Montalban* is reflected in ss. 173(1) of the *BIA*. As Côté J. explained in *Poonian* at para 23, “[m]any of those [ss. 173(1)] facts bear directly on the bankrupt’s conduct and culpability, while others reflect standards of commercial morality.”

6. ANALYSIS

Issue 1: Based on proof of ss. 173(1) facts and Dr. Lemstra’s conduct generally, is Dr. Lemstra an honest, but unfortunate debtor?

[115] In assessing whether Dr. Lemstra is an honest but unfortunate debtor, the Court will look at whether the ss. 173(1) facts at issue have been established as well as the general honesty of Dr. Lemstra before and during his bankruptcy.

[116] Many ss. 173(1) facts have been raised in this matter and I will only consider some of them. In my view, much of the evidence is also relevant to multiple ss. 173(1) factors as is Dr. Lemstra’s honesty generally. Other areas of misconduct, such as swearing false statements may be offences under the *BIA*, but that determination is outside the scope of this discharge application.

A Fact Under ss. 173(1) of the BIA

[117] Subsection 173(1)(a) precludes the Court from granting an absolute discharge if:

(a) 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;

[118] With ss. 173(1)(a) of the *BIA*, the contents of the trustee's report prepared pursuant to s. 170 are of great importance initially. In discharge applications, the "170 Report", as it is commonly called, is to be construed as evidence of the statements it contains (ss. 170(5)). Following the establishment of the asset to debt ratio in ss. 173(1)(a) through the Trustee's "170 Report", the onus then shifts to a bankrupt to demonstrate that such fact arose from circumstances for which a bankrupt "cannot justly be held responsible" (see: *Keep* at para 60, *Olson (Re)*, 2020 SKQB 120 at para 10 [*Olson*]).

[119] The impact of certain actions on liability under a personal guarantee becomes particularly germane when assessing whether a fact under ss. 173(1)(a) has been established.

The link between corporate conduct and a bankrupt's circumstances

[120] As outlined by Elson J. in *Keep* at paras 46-55, the concept of the "corporate veil" does apply in proceedings under the *BIA*. The foundational notion of limited liability in our inherited English law holds that "a corporation has a personality, distinct from its members, shareholders, and officers, arises from the concept of limited liability" (*Keep*, para 50). However, one way of linking the actions of a bankrupt

personally and the actions of a bankrupt as a “corporate mind” involves piercing the corporate veil through a contract in the form of a personal guarantee. Elson J. in *Keep* stated that:

[54] Having said this, I also accept that circumstances related to one of the s. 173 facts may be viewed differently if the shareholder personally guarantees the corporation’s obligations. It must be understood that such personal guarantees serve as a means of circumventing the limited liability feature of a corporation’s framework. In such circumstances, a bankruptcy court might be justified in assessing the bankrupt shareholder’s conduct in the corporation’s operations if that conduct impacts the liability under the personal guarantee....

[121] In bankruptcy discharges the “corporate veil” can be pierced through a presence of personal guarantee. The actions of a bankrupt guarantor who also happened to be a director or “controlling mind” of a corporation before bankruptcy can be considered by the Court insofar it reduces the ability for secured creditors to realize on secured assets and increases exposure under the personal guarantee (*Olson*, paras 35-41, see also *Re Pratchler (Bankruptcy)*, 2001 SKQB 302, 209 Sask R 208). Likewise, the honesty of such a person in the exercise of corporate power can also be taken into account (*Olson*, para 33).

[122] In *Keep*, a bankrupt sole director, officer, and shareholder of a leisure home company applied for discharge from bankruptcy. His discharge was opposed by a creditor who acted as a supplier of hot tubs for the bankrupt’s corporation. The entities entered into a dealer arrangement. The inventory was secured by a charging provision in an agreement, but the security interest was never perfected by registration in the Saskatchewan Personal Property Registry. The supplier creditor also obtained a personal guarantee of the bankrupt. The Court found that the bankrupt allocated proceeds of sale of the hot tubs to other payees, instead of the objecting creditor, despite the bankrupt’s awareness of his exposure under his personal guarantee to the supplier. In the circumstances, Elson J. found that facts under ss. 173(1)(a) and (d) were

established in evidence and granted a conditional order of discharge.

[123] In *Olson*, the bankrupt was the sole director and shareholder of a corporation, ABO, that took \$1.4 million in financing from a Credit Union. As security for the financing, the Credit Union and the corporation entered into three general security agreements. The bankrupt also provided a personal guarantee of ABO's indebtedness to the Credit Union. Following a dispute with a landlord over an access and royalty arrangement for gravel, the relationship broke down causing the borrower corporation to be locked out of the land to extract gravel, and an excavation, hauling and crushing contractor to register liens on the landlord's land, the borrower defaulted on its obligations to the Credit Union.

[124] After enforcing against the secured property, the Credit Union commenced an action against the personal guarantor and obtained judgment. Two months after judgment, the assignment into bankruptcy took place. The trustee recommended an absolute discharge. Registrar Thompson found that the bankrupt suffered "significant misfortune" due to the circumstances of the business failure, but that he had "not acted altogether honestly with regard to the exercise of his sole control over ABO and the ABO financing arrangements that he personally guaranteed." (para. 33) and had not met his onus under ss. 173(1)(a) of the *BIA*.

[125] More specifically, he caused ABO to pledge assets that were not owned or controlled by the company and failed to account for the whereabouts of certain other assets. The Credit Union financing helped increase the value of shares he personally held in ABO and the failure of the business as well as his actions in controlling the company resulted in the shares being worth \$1 at the time of the bankrupt's assignment. A conditional discharge was then granted.

Bankrupt guarantors and their onus under ss. 173(1)(a)

[126] The presence of personal guarantees also raises special considerations for bankrupt guarantors in attempting to meet their onus. In *Sethi (Re)*, 2012 NSSC 370, 322 NSR (2d) 190, Registrar Cregan provided an overview of the caselaw standing in this area:

[11] I am assisted in this decision by a review of three cases of Henry J. of the Ontario High Court made by Registrar Herauf of the Saskatchewan Court of Queen's Bench in *Forsberg, Re*, 2001 SKQB 289, at paragraphs 12 to 19.

[12] The first case, *Re Gafni* (1978), 26 C. B.R. (N.S.) 22, concerned a bankrupt who had given a personal guarantee of the debts of a company of which he was sole shareholder. The bankrupt was unable to honour the guarantee. Henry J. found that he was unable to meet the burden required by Subsection 173(1)(a). He said at page 23 thereof:

There is no evidence that when he personally guaranteed the debts of the company he was in any position to implement such a guarantee should he be required to do so.

[13] *Re Kirk* (1980), 36 C.B.R. (N.S.)10 also concerned a personal guarantee of the debts of a business of which the bankrupt was principal. The evidence was that when the guarantee was given, he had no assets with which to answer it.

[14] *Re Buceta* (1981), 40 C.B.R. (N.S.) 162 considered similar facts. I quote from page 164, thereof:

He has not satisfied the court, as required by S. 143(1)(a) [now S.173 (1)(a)] of the *Bankruptcy Act*, that his failure to provide sufficient assets (or to have available sufficient assets of his own to be able honestly to give the guarantee and ultimately to implement it) arises from circumstances for which he cannot justly be held responsible.

[15] The point of these three cases is that bankrupts who have guaranteed debts of their businesses as required by their lenders

are presumed to have represented that they have ability to respond to their guarantees. However, if they become bankrupt without the resources to respond and their assets are less than 50 cents on the dollar of debt, they may thereby fail to meet the burden which Subsection 173(1)(a) imposes. It may be otherwise, if the lender granted the loan knowing it was unlikely the guarantor would be able to respond to the guarantee, but took the guarantee simply for what it might be worth.

[Emphasis added]

A fact under ss. 173(1)(a) is proven

[127] The Amended Report of the Trustee indicates that Dr. Lemstra has exigible assets under the threshold set out in ss. 173(1)(a) of the *BIA* and also sets out the position of the Trustee that such fact is established.

[128] Beyond the Affinity, CIBC, CRA, and RBC debts constituting over half of the proven unsecured liabilities, the Court has little information regarding the circumstances of other proven claims. However, a significant portion of total liabilities appear to arise from personal guarantees given by Dr. Lemstra or from liability from unpaid wages.

[129] The assets of \$3,672.11 realized by the Trustee constitute approximately 0.0008% of his \$4,721,823.96 in proven unsecured liabilities. Accordingly, the onus shifts to him to establish that fact arose from a situation where he “cannot justly be held responsible”.

Dr. Lemstra’s position

[130] Essentially, Dr. Lemstra’s position is that the thefts created a snowball effect that culminated in threats of CRA enforcement in August 2023 that was about to ruin Alliance Health corporations as going concerns. The thefts also resulted in tax liability in forcing Dr. Lemstra to withdraw his pension and RRSPs early. After physicians were notified of impending garnishment, a stampede started that resulted in

Alliance Health having no value.

[131] However, for the reasons that follow, I do not believe that Dr. Lemstra's explanation is sufficient for him to meet the onus that his liabilities have arisen from circumstances for which he cannot justly be held responsible. To the extent Dr. Lemstra explained some of the situation, I also have significant doubts about Dr. Lemstra's honesty and credibility.

Actions as the controlling mind of various corporations increasing personal liability and dissipating assets

[132] Viewed from a high level, Dr. Lemstra's causing AHS to borrow approximately \$2.5 million or more in an apparent expansion push after knowing about significant thefts from other Alliance Health corporations makes little sense based on the current explanations available to the Court.

[133] Furthermore, there is no evidence before the Court that the loss of approximately \$1.5 million in the thefts was known by Affinity or CIBC when the lending was solicited.

[134] In this regard, on top of his guarantees, Dr. Lemstra is extremely responsible for this borrowing as the sole director, officer, and shareholder of AHS when the original CIBC and Affinity loans were made as the key point person and sole signing authority when the 2023 readvances were made by CIBC.

[135] Related to this, AHS and the other Alliance Health corporations which Dr. Lemstra controlled failed to provide a first security position to CIBC that would have required that RBC indebtedness be paid out and their security interests discharged. I accept CIBC's assertion that this failure jeopardized its security position and increased Dr. Lemstra's personal liability.

[136] With respect to Affinity's loans, the evidence before the Court indicates that the Regional Corporations were never amalgamated with AHS despite Dr. Lemstra's promises and representations to that effect. Only consolidated financial statements were prepared by Scott Schuler and provided to Affinity, but no legal amalgamation ever took place.

[137] In addition to the amalgamation issue, it appears that further representations were made that AHS had acquired the assets of the Regional Corporations when no evidence exists it had actually done so. The 2022 Financial Statements Dr. Lemstra provided to Affinity contained a representation that the assets of the Regional Corporations were acquired by AHS for no money but that their fair market value was \$2,081,549. However, no evidence was produced to substantiate this claim. Above all, this acquisition could not have been real because the September 2023 Sale Agreement sold the assets of many of the Regional Corporations along with AHS to Schomes Holdings.

[138] The security granted to Affinity and CIBC on loans being negotiated at the same time created a strange dilemma. On one hand, the Affinity Loans were secured by a GSA on the assets of AHS with the understanding that it had amalgamated with the Regional Corporations (with a further representation that it had acquired their assets). On the other hand, CIBC lent funds to AHS that were secured on the assets of the Regional Corporations and AHS. It is very puzzling why Dr. Lemstra would represent to one lender that an amalgamation would take place and then cause the same corporations to grant security in their assets to another lender at approximately the same time. The objecting creditors presented evidence that this fact, combined with the general uncertainty as to asset ownership, presented some jeopardy to the objecting creditors being able to enforce their security on corporate assets.

[139] In addition to the security issues, the use of Affinity funds by AHS at the direction of Dr. Lemstra following the \$350,000 loan raises many questions that Dr. Lemstra has failed to answer to any degree of satisfaction. Of \$394,326.10 withdrawn from the AHS account and line of credit, \$376,000 went to other AHS accounts, Dr. Lemstra, and Nicole. Of most concern is the \$88,000 payment to Nicole on May 18, 2022 that appears to have no legal basis in the Interspousal Agreement.

Personal actions relating to guarantees, increasing personal liability, and dissipating assets

[140] In addition to various corporate actions, Dr. Lemstra also took certain personal actions that increased his liabilities.

[141] Dr. Lemstra explained that his tax liabilities arise from his redemption of RRSPs and his pension in 2019 and 2022 to cover losses from the thefts. Some of this may be plausible, however Dr. Lemstra also asserted in a sworn statement that he withdrew his pension in 2022 to cover losses from both the thefts and living expenses due to unemployment. However, this is difficult for the Court to accept given Dr. Lemstra could not be considered unemployed until September 2023.

[142] The evidence before the Court also demonstrates that Dr. Lemstra likely gave guarantees that he was unable to fulfill and that neither Affinity nor CIBC were aware of his true financial state. Furthermore, the evidence demonstrates that Dr. Lemstra was likely dishonest in his financial disclosures to Affinity in advance of giving the Affinity Guarantees.

[143] Although hard to take credibility, the 2021 PNW Statement signed by Dr. Lemstra on December 7, 2021 in advance of the Affinity financing indicated that he had an income of “\$10 million/year”, owned assets including 6 medical clinics valued at \$10,000,000, and estimated the equity in the Corman Park Home at \$1.4 million. The

income and valuations do not appear to reflect Alliance Health financial statements around that time.

[144] However, only two weeks later, Dr. Lemstra concluded the Interspousal Agreement.

[145] By the time the Affinity Guarantees were signed on May 17, 2022, Dr. Lemstra would have been well aware of the effect of the Interspousal Agreement signed on December 22, 2021 that all of his equity in the Corman Park Home (and the RESPs) were turned over to his daughters or to Nicole. Only one day later, RBC registered a new mortgage on title to the Corman Park Home and Dr. Lemstra allocated approximately \$500,000 of equity to Nicole outside the terms of the Interspousal Agreement.

[146] Likewise, the same issue arises with the CIBC Loans for which Dr. Lemstra gave an unlimited personal guarantee. This guarantee was given after Dr. Lemstra knew he effectively disposed of his exempt and non-exempt equity in the Corman Park Home and had no other exigible assets other than shares in AHS.

[147] Dr. Lemstra also failed to disclose that he owned shares in 582 Sask to the Trustee upon his assignment. 582 Sask was incorporated in July 2023 and Dr. Lemstra was the majority shareholder from the outset. This lack of disclosure also negatively impacted his asset to liability ratio. Although the Trustee later concluded in a letter to the creditors that these shares had no value at the date of Dr. Lemstra's bankruptcy, I find that conclusion questionable. The bank statements provided by Affinity indicated that 582 Sask had \$9,305.41 on the date of Dr. Lemstra's assignment, indicating that some value existed. In any event, this underscores the need for bankrupts to be fully transparent when making assignments.

A fact under ss. 173(1)(b) is proven

[148] Closely related to Dr. Lemstra's inability to account for the hole of debt he and AHS found themselves in is the assertion that improper books and records were kept. A failure to keep usual and proper books of account in the business carried on by a bankrupt is a serious matter in the bankruptcy regime. Subsection 173(1)(b) of the *BIA* states:

(b) the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by the bankrupt and as sufficiently disclose the business transactions and financial position of the bankrupt within the period beginning on the day that is three years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;

[149] While the Court does not have the benefit of expert accounting evidence, I do take notice that the preparation of financial statements is likely a common practice in the industry in which Alliance Health operated. The provision of financial statements to lenders by Dr. Lemstra bolsters this conclusion.

[150] The sufficiency of financial statements of Alliance Health entities likely had a direct bearing on Dr. Lemstra's personal liability as guarantor because of their potential impact on lending and enforcement decisions. He was also ultimately responsible for their contents.

[151] In this regard, I agree with Affinity that the 2021 and 2022 Financial Statements provided to them do not appear to show the impacts from the thefts or any potential liabilities owing to CRA as a result. In addition, the 2022 Financial Statements appear to suggest that the assets of the Regional Corporations were acquired by AHS when evidence exists to show that they actually sold their assets in September 2023.

[152] The combination of promising to amalgamate AHS with the Regional Corporations, failing to do so, and then providing consolidated financial statements to

Affinity (even if acceptable from an accounting perspective), while later pledging the assets of the Regional Corporations elsewhere, only adds to the cloud of suspicion hanging over Dr. Lemstra's actions and impugns his honesty.

[153] Accordingly, a fact under ss. 173(1)(b) is established.

A fact under ss. 173(1)(d) is proven

[154] The fact in ss. 173(1)(d) of the *BIA* is established if “the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities”.

[155] The failure to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities can be made out “[i]n circumstances of significant asset depletion without a corresponding satisfactory explanation” (*Burroughs (Re)*, 2010 SKQB 51 at para 31, 348 Sask R 126 and *Schreiner, Re (Bankrupt)* (1998), 173 Sask R 248 (QB)).

[156] In Dr. Lemstra's case, I find that this fact has been established.

[157] As a shareholder and guarantor, the value of the Alliance Health businesses had a direct impact on Dr. Lemstra's own liability. In this respect, the Court is left with significant questions regarding the steep decline in the value of AHS assets.

[158] On December 7, 2021, Dr. Lemstra claimed that the six clinics he owned were worth \$10,000,000. A 2022 Financial Statement said that AHS had assets of \$4.538 million, with the Regional Corporations' assets having a fair market value of \$2.081 million, despite being allegedly purchased for no value. By July 2023, the collective purchase prices for AHS assets was \$450,000 and by September 2, 2023, the assets were sold for \$1.

[159] I do not accept Dr. Lemstra's assertion that the impending resignation of physicians would render all assets effectively worthless. Such an outcome would undoubtedly impact the value of AHS shares and its valuation based on an income stream, however the assets themselves still likely had significant residual value. If they did not in the face of potential business failure, lenders would not secure against them.

[160] In addition to wildly varying asset valuations, Dr. Lemstra provided contradictory evidence under oath regarding the extent to which he helped Makenna purchase a horse or horses. The horse loan from Affinity saw \$50,000 being lent to purchase a horse for his daughter, but neither the horse nor what happened to the loan proceeds have been explained by Dr. Lemstra. He told the Trustee that no funds were used to purchase a horse for Makenna, however he also told the Official Receiver that \$4,500 of his money was used to purchase a horse in 2018.

[161] Dr. Lemstra also failed to sufficiently explain why he gave Nicole over half a million dollars outside the Interspousal Agreement and failed to disclose this payment on his sworn Statement of Affairs.

[162] Finally, Dr. Lemstra told the Court that he was unable to get financial statements after the Sale Agreement in September 2023 because ownership had changed. However, it is also clear that a business relationship continued to exist between Dr. Lemstra, Scott Schuler and Patti Cameron during the bankruptcy.

[163] Accordingly, a fact under ss. 173(1)(d) is established.

A fact under ss. 173(1)(o) is proven

[164] Subsection 173(1)(o) prevents the Court from granting an absolute discharge to a bankrupt who has failed to perform their duties under the *BIA* or comply with a Court order.

[165] The duties of a bankrupt are set out in s. 158 of the *BIA* and include:

Duties of bankrupt

158 A bankrupt shall

(a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;

...

(e) make or give all the assistance within his power to the trustee in making an inventory of his assets;

...

(k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;

[166] While the Trustee submitted that Dr. Lemstra complied with his duties by attending the mandatory counselling and providing income and expense information, I find that Dr. Lemstra has failed to comply with other duties. Specifically, Dr. Lemstra's failure to disclose owning shares in 582 Sask and then disposing of those shares (which vested in the Trustee) to Patti Cameron while bankrupt constitute a breach of his duties under ss. 158(a), (e) and (k) of the *BIA*.

Honesty and Conduct Generally

[167] In determining an appropriate disposition in this matter, the actions of Dr. Lemstra generally must be taken into account. Of particular concern are his dishonesty, secrecy, and strategic non-disclosure relating to asset transfers and agreements with close business associates.

[168] Of primary concern is the evidence submitted by the Trustee that Dr. Lemstra represented that the business assets were seized by landlords and that the Regional Corporations were amalgamated with AHS. The claim about landlords seizing

assets was repeated in his sworn Statement of Affairs. The evidence before the Court indicates that these were false statements.

Family Disclosures

[169] The other questions regarding Dr. Lemstra's honesty go to a fundamental level. So far, in fact, that the Court is left questioning whether he is providing the accurate ages of his own daughters. In the 2021 PNW Statement dated December 7, 2021, Dr. Lemstra stated that his dependent daughters were aged 20 and 18 and that they were listed as being over 18 years old in the Interspousal Agreement some days later. However, in the Affidavit sworn February 10, 2025, Dr. Lemstra stated that his two daughters were 21 and 20 years old and were dependents.

[170] Dr. Lemstra also appears to have said different things regarding the allocation of equity in the Corman Park Home. In his Affidavit, the trust for Makenna and Kelli was for "child support", but then also stated in Court that those funds were to provide for their post-secondary education. The allocation of equity to Nicole was for "spousal support". However, the Interspousal Agreement explicitly waived spousal support and declared that child support obligations were inapplicable.

Corporate Roles

[171] In addition, I question Dr. Lemstra's sworn statement in his Statement of Affairs that he "cashed out" a pension in 2022 to help with "living expenses due to unemployment." It is unclear how Dr. Lemstra could be considered to be unemployed given his documented chief executive roles with the Alliance Health corporations in 2022 until September 2023.

[172] Dr. Lemstra told the Court that he had resigned as a director of AHS on January 1, 2023 to focus on helping his daughter. However, after January 1, 2023, Dr. Lemstra was still the key point person in negotiating the CIBC lending, signing all

documents as “President” of AHS and continuing to be the sole shareholder of the company and its “CEO”. He also was active in attempting to sell the corporation’s assets in July 2023 and in negotiating with the CRA up to September 2023.

Actions attracting suspicion and impugning credibility

[173] The objecting creditors and the Trustee have raised the possibility that Dr. Lemstra may have made fraudulent transfers of property and may be engaged in a side arrangement whereby his family members and business associates may be holding beneficial interests for Dr. Lemstra until after his bankruptcy. However, such a determination is outside the scope of this discharge hearing.

[174] That said, a consideration of the available evidence and the circumstances generally do raise some suspicions and does impugn Dr. Lemstra’s honesty and credibility which the Court must assess in a discharge application.

[175] Specifically, the combination of the Equity Payout Agreement with no basis in the Interspousal Agreement, along with the timing of payments to Nicole (including from AHS over which she had no claim), and her own property acquisitions raise these suspicions.

[176] Further suspicions are raised by the Interspousal Agreement trust created by Dr. Lemstra for his daughters and the ownership of \$892,000 in equestrian horses by Makenna when combined with Makenna’s transfer of \$3,200 to 582 Sask in December 2023 and Kelli’s transfer of \$200 in March 2024. Neither Kelli nor Makenna appear to be shareholders in 582 Sask. Why they transferred funds to a company account used by Dr. Lemstra when they had no interest in the company is a major unresolved question.

[177] The incorporation dates of the Sure Health entities in July 2023 and the July 15, 2023 Asset Purchase Agreements indicate that an asset sale was planned

months before Dr. Lemstra claimed Scott Schuler came up with a plan to ensure patient care and record continuity on September 2, 2023. It is unclear why such a plan was pitched to Affinity and the extent to which a breakdown in negotiations with the CRA informed it. However, these unanswered questions certainly lend to the suspicion that a plan existed to defeat the claims of creditors, minimize surplus income and then reintroduce Dr. Lemstra in similar roles after his discharge.

[178] In the examination, Dr. Lemstra stated that he had not eaten for 11 days before his application for social assistance on March 12, 2024, however the usage of the 582 Sask account strongly contradicts that assertion. Between March 1 and March 12, 2024, approximately 26 transactions were put through the 582 Sask account revealing 4 separate transactions for restaurants, 8 separate transactions for groceries, 12 separate transactions for liquor and one fitness membership charge. I find it highly implausible that Dr. Lemstra was making that many food, convenience and liquor purchases while not consuming any of it. Accordingly, the sworn testimony Dr. Lemstra provided to the Official Receiver in that regard cannot be viewed as reliable and undermines his assertion that he was truly in need of social assistance.

[179] In addition, I question whether many charges outside to the 582 Sask account were truly for business purposes. Charges like haircuts, rent, dog grooming, and fitness memberships lead me to question whether Dr. Lemstra is being honest and why he was concealing lifestyle expenses from the Trustee.

[180] In addition, the Mental Health Agreement contains an increasing compensation structure that coincides with Dr. Lemstra's dates for automatic discharge (a fact he pointed out to a representative of the Trustee). It also contains a form of "poison pill" provision that sees Dr. Lemstra's shares in 582 Sask which should have vested in the Trustee get "seized" by (transferred to) Patti Cameron if the bankruptcy "interferes with the new business in any way".

[181] Overall, if the story is as simple as Dr. Lemstra now portrays and that he was truly an unfortunate debtor, being a victim of crime and zealous CRA enforcement, why not just tell the full truth to the Trustee? The overwhelming weight of evidence indicates that Dr. Lemstra, although having suffered some misfortune, is not an honest debtor.

Issue 2: If not, what is the appropriate use of the Court’s discretion in Dr. Lemstra’s discharge?

[182] When using the broad statutory discretion in ss. 172(2) of the *BIA*, the Court may choose from a range of options depending on the individual circumstances of the case taking into account the interests of the bankrupt, that of the creditors, and the integrity of the bankruptcy system.

[183] When faced with significant dishonesty from bankrupts, Courts have sometimes refused discharge outright. In *Giannotti*, MacPherson J.A. of the Ontario Court of Appeal stated that “a dishonest debtor, and a debtor unwilling to make full disclosure of his financial affairs, is entitled to no relief under the *BIA*” (para. 15).

[184] However, Courts can also uphold the integrity of the bankruptcy system by granting conditional orders with sufficiently stringent terms.

[185] In such cases, Nixon A.C.J. provided some recent guidance in *Hillsboro Ventures Inc. v Ceana Development Sunridge Inc.*, 2024 ABKB 658 [*Hillsboro*]:

[202] In *Dykes, Re* [2014 ABQB 323] at para 47, citing *Lok, Re*, 2010 SKQB 327 at 6-153, this Court provided guidance on determining an appropriate condition:

Perhaps the best tha[t][sic] can be done is: if the conduct is extremely bad, then the discharge should either be refused or a conditional order should be made without regard to the bankrupt's income; if the conduct is not so extreme, then a conditional order should not be made if

the bankrupt's income and future prospects clearly will not permit payments to be made without inflicting hardship on the bankrupt and his or her dependents.

[Emphasis added.]

[203] Other factors that a court may consider are as follows: the attitude of the bankrupt throughout the process; whether the bankrupt has treated his or her creditors with disdain; and the age and ability of the bankrupt to pay a condition of discharge: *Elford (Re)*, 2017 ABQB 433 at paras 75-80.

[186] In my view, the presence of significant dishonesty in Dr. Lemstra's bankruptcy, the presence of s. 173(1) facts, and the quantum of proven claims are serious matters. Such issues, if unanswered by the Court, impact the interests of the creditors and the integrity of the bankruptcy system. Dr. Lemstra's dishonesty is of particular concern and could justify a refusal of his discharge. Additionally, I have some concerns that Dr. Lemstra has not demonstrated the honesty required to perform the terms of the conditional order as suggested because it requires good-faith self-reporting.

[187] However, I am also not convinced that refusing discharge is the ideal outcome as it will expend further Trustee, creditor, and Court resources in a future application.

[188] With respect to a conditional order, the Court must arrive at a payment condition that is grounded in evidence of a bankrupt's income and ability to pay without suffering undue hardship.

[189] In Dr. Lemstra's case, the Court does not have sufficient evidence of income prior to bankruptcy and what his real income is at present. In cases where income information is lacking and Courts determine that a bankrupt is "laying low" to avoid surplus income obligations, Courts have imputed income to bankrupts as part of conditional discharge orders (*Nagy v Canada (National Revenue)*, 2010 SKQB 124, 353 Sask R 287). However, I do not believe the Court has sufficient information to even

do that.

[190] This leaves me with the approach suggested by the Trustee and the objecting creditors. I am of the view that the Court has sufficient discretion to order surplus income and reporting obligations outside of the Superintendent's Guidelines covering 21 months. I note that two years of such obligations were imposed by this Court in both *Olson* and *Keep* with significantly less dishonest bankrupts. (See also: *Kassian (Re)*, 2021 SKQB 265).

[191] I am also of the view that the period of five years for a conditional order is not unduly lengthy. In *Hillsboro* at paras 208-209, Nixon A.C.J. identified a range of three to seven years for payments on conditional orders to be reasonable, with longer terms available for increased deterrent measures. In *Landry v Fontaine & Associates Inc.*, 2018 ONSC 77 [*Landry*], a first time bankrupt former business owner with a family of four was granted a conditional discharge order requiring payment of \$36,000 at \$600 per month and a five-year suspended discharge. In *Landry*, Gordon R.S.J. found on top of running a pizza enterprise in an incompetent manner, the bankrupt was "less than forthright both in the operation of his business and in the course of his bankruptcy" (para. 12).

[192] I do accept that Dr. Lemstra does suffer from Asperger's Syndrome and some other conditions he noted. However, both the available medical report and Dr. Lemstra's actions appear to contradict his assertion that he is and will be medically unable to work if remaining in bankruptcy.

[193] The medical report he provided to the Official Receiver indicates that he is able to return to work in time. This contradicts his assertion that any payment condition would render him medically unable to work. In my view, such an assertion is only a self-serving attempt to avoid a conditional order.

[194] Furthermore, the Healthcare Cost Solutions Plan appears to contradict Dr. Lemstra's own evidence that he suffered a mental collapse and was medically unable to work after September 2023. The Healthcare Cost Solutions Plan exhibited to the Trustee Affidavit indicated that Dr. Lemstra appeared quite well enough to meet with the Minister of Health on September 23, 2023 and numerous officials thereafter including the "the Minister of Mental Health, Senior Health and Rural Health, the CEO of the Saskatchewan Health Authority, two Executive Directors of the Ministry of Health, the CEO of all Catholic hospitals and long term care facilities, the CEO of 3S Health, the Vice President of Rexall Drugs and many others".

[195] Dr. Lemstra also stayed busy with the plan through November 2023 and planned a trip to India in June 2024. In addition, if I accept that some of the charges to the 582 Sask account were for business purposes, then Dr. Lemstra was also active in soliciting investment in Saskatchewan and Alberta in January to April, 2024. In the Mental Health Agreement, Dr. Lemstra also agreed to begin working full time in September 2024. This evidence indicates that Dr. Lemstra was capable of working when it suited him.

[196] Overall, the five-year conditional order may prevent him from resuming his pre-bankruptcy activities as the sole director, shareholder and officer of many companies during its term, but he is not prevented from serving an important role in something more akin to an employee. It will also strike a balance between providing Dr. Lemstra with a potentially significant income, albeit one shared with the creditors through his bankruptcy estate.

7. DISPOSITION

[197] Accordingly, considering the interests of Dr. Lemstra, those of his

creditors, and the integrity of the bankruptcy system, I am prepared to grant an order of conditional discharge on the terms agreed to by the Trustee and the objecting creditors. Namely, that:

- (a) That the bankrupt, Mark Edgar Lemstra (the “Bankrupt”), shall report his income net after taxes and minimum statutory remittances (“Income”) to the Trustee and shall provide the Trustee with copies of all personal income tax filings on an annual basis for a period of five years commencing on January 1, 2025 and ending on December 31, 2029 (the “Reporting Period”);
- (b) The Bankrupt’s Income shall consist of all income of any kind, including, but not limited to:
 - i. All amounts paid to the Bankrupt during the Reporting Period;
 - ii. All amounts that become payable to the Bankrupt at any time during the Reporting Period;
 - iii. All amounts held by a third party for the benefit of the Bankrupt at any time prior to the end of the Reporting Period, including, but not limited to any amount of shareholder’s equity in a corporation held for the Bankrupt’s benefit; and
 - iv. All amounts that by promise or agreement made or negotiated prior to the end of the Reporting Period become payable to the Bankrupt after the Reporting Period.
- (c) The Bankrupt shall pay to the Trustee 50% of the Bankrupt’s Income for each year of the Reporting Period above \$36,000.00 for each year.

[198] No costs were requested by the Trustee and the objecting creditors, so

none shall be ordered.

[199] The Trustee shall prepare a draft order including the above conditions in the prescribed form of order in Civil Practice Directive #4. A conference call can be requested to discuss the final terms of the order if needed. The order shall then issue in accordance with ss. 182(1) of the *BIA*.

Order accordingly.

ALEXANDER K.V. SHALASHNIY
REGISTRAR IN BANKRUPTCY
SENIOR JUSTICE OF THE PEACE