

CITATION: *Re Shaw*, 2025 ONSC 6385
COURT FILE NO.: 31-3064536
DATE: 20251209

**SUPERIOR COURT OF JUSTICE – ONTARIO
(IN BANKRUPTCY AND INSOLVENCY)**

RE: *In the Matter of the Bankruptcy of Ricky Martin Shaw*

BEFORE: Associate Justice Rappos

COUNSEL: *Ricky Martin Shaw*, self-represented

Paul Ihnatiuk and Ilan Kibel, representatives of BDO Canada Limited

Yannick Michelin, representative of the Office of the Superintendent of Bankruptcy

HEARD: July 15, 2025 (via videoconference)

REASONS FOR DECISION

Overview

[1] BDO Canada Limited, in its capacity as trustee in bankruptcy for Ricky Martin Shaw, brings a motion for directions and asks the Court to determine whether amounts received by Mr. Martin from Thomasfield Homes Limited during his bankruptcy are “total income” under the *Bankruptcy and Insolvency Act* (the “BIA”). If such amounts do constitute total income, then Mr. Shaw will be required to make payments to the Trustee on account of him having “surplus income” under the surplus income guidelines.

[2] The Trustee’s view is that the amounts are advances on future earnings, and Mr. Shaw requires these funds to service his monthly negative budget deficits by taking on additional debt. As a result, the Trustee asks that the amounts be considered total income under the BIA.

[3] Mr. Shaw maintains that the amounts from Thomasfield are loans, and that he has had this type of arrangement with Thomasfield for many years. Mr. Shaw argues that he is supported by loan documentation he signed in favour of Thomasfield, as well as evidence from the owner of Thomasfield. Mr. Shaw also says that the Trustee never told him that he could not borrow money while bankrupt, and was never told that it could be considered income for the calculation of any surplus income obligation.

[4] For the reasons that follow, I find that the amounts advanced to Mr. Shaw are liabilities and do not fall within the definition of “total income” under the BIA.

Facts

[5] The evidence before the Court was by way of the affidavits of Paul Ihnatiuk of BDO sworn February 21, 2025 and June 26, 2025, Mr. Shaw's affidavits sworn May 29, 2025 and July 9, 2025, and the affidavits of Tom Krizsan, president of Thomasfield, sworn January 6, 2024¹ and June 3, 2025. Mr. Shaw also gave oral evidence under oath during the hearing of the motion.

Bankruptcy Proceeding

[6] Mr. Shaw filed an assignment in bankruptcy on April 5, 2024. This was his first interaction with the Canadian bankruptcy and insolvency system.

[7] Mr. Shaw is listed as a self-employed real estate consultant in his statement of affairs. Mr. Shaw advised the Trustee that he provided services to Thomasfield, and that he also received loans from them. Mr. Shaw's statement of affairs lists him owing \$146,579 to Thomasfield. This amount was confirmed in a letter from Thomasfield dated March 20, 2024.

[8] In connection with his filing, Mr. Shaw completed Form 65 – Monthly Income and Expense Statement of the Bankrupt and the Family Unit. In that form, Mr. Shaw disclosed gross self-employment income of \$2,700, and a monthly budget deficit of \$2,505.

[9] The Trustee determined, based on its discussions with Mr. Shaw, that Mr. Shaw was not required to make any surplus income payments to the Trustee.

[10] As a result, as Mr. Shaw was a first time bankrupt with no surplus income to be paid, he was eligible to receive an automatic discharge from bankruptcy in nine months.

[11] In the months that followed, the Trustee noticed that Mr. Shaw received deposits of \$8,000 from Thomasfield in April, May and June 2024. Mr. Shaw informed the Trustee that he continued to receive monthly loans from Thomasfield after he filed for bankruptcy. These amounts were not included by Mr. Shaw as income in his monthly income and expense statements that he submitted to the Trustee for these three months.

[12] Mr. Shaw produced to the Trustee three promissory notes each in the amount of \$8,000 dated April 12, 2024, May 7, 2024, and June 5, 2024. The notes provide that the principal amount bears interest at the rate of 10%, calculated annually not in advance. The principal amount and all accrued interest are due and payable on April 12, 2026, provided that "any commissions which may become owing by the Lender to the Borrower prior to such date shall be set-off against the Principal Amount and accrued interest." The notes also allow Mr. Shaw to pay all or part of the principal amount without notice, bonus or penalty.

¹ This date is incorrect, as it has attached as exhibits promissory notes dated as late as December 4, 2024.

[13] Mr. Shaw says that the loans were not issued in exchange for future services, and any repayment of the loan would come from his own future means, including the potential of earning consulting fees if he could find viable real estate opportunities for Thomasfield. Mr. Shaw notes that these opportunities are not guaranteed to come to fruition.

[14] On November 19, 2024, the Trustee informed Mr. Shaw that they had determined that the loans from Thomasfield constituted income, and that they had notified the Office of the Superintendent of Bankruptcy (“OSB”) and Mr. Shaw’s creditors that he owed surplus income and that his automatic discharge period was extended from 9 months to 21 months after the date of bankruptcy.

[15] The Trustee and Mr. Shaw disagreed as to the treatment of the monthly loans from Thomasfield. They attempted to mediate the dispute but were unsuccessful.

Relationship between Shaw and Thomasfield

[16] Mr. Shaw says he has known Mr. Krizsan for 40 years and that “once he started doing consulting work, Thomasfield became a good client of mine, and I began sourcing real estate land acquisitions for this company as an independent contractor.”

[17] Mr. Krizsan described Mr. Shaw as an “independent real estate consultant [who]... investigates potential development land and acquires new land purchases for Thomasfield Homes in Dufferin County.” Mr. Krizsan confirmed that Thomasfield “has made several loans to him from time to time”.

[18] Mr. Shaw said that he does perform consulting services for Thomasfield and would issue invoices to Thomasfield for such work. Mr. Shaw has produced invoices he issued to Thomasfield dated July 2, 2024, August 21, 2024, September 17, 2024, September 30, 2024, October 31, 2024, and December 2, 2024.

[19] Each invoice is in the amount of \$3,000 plus HST and represents 50 hours of work at \$60 per hour for “professional services rendered in connection with Grand Valley lands” for the months of June, July, August, September, October and November 2024.

[20] Mr. Shaw states that as he “did not have a job where I would make a regular salary, my thought was that since I was certain that I could make a living in the future, I needed a ‘nest egg’ in order to survive. I decided that I could ask Thomas if Thomasfield could loan me money during my bankruptcy, until I could get back on my feet again.”

[21] Thomasfield filed a proof of claim, which shows that \$146,579 was owed as of the date of bankruptcy. This amount is comprised of \$136,597.56 in principle from loans made between October 19, 2021 and January 10, 2024, and accrued interest of \$9,981.44. The proof of claim provided the following details about the loans:

Date	Principal Amount
October 19, 2021	\$50,000 ²
May 17, 2022	\$30,000
May 2, 2023	\$20,000, with \$6,000 garnished by CRA
July 24, 2023	\$25,000, with \$7,500 garnished by CRA
October 26, 2023	\$25,000, with \$7,500 garnished by CRA
January 10, 2024	\$20,000, with \$6,000 garnished by CRA

[22] Thomasfield produced loan agreements for the loans made on October 19, 2021, May 17, 2022, October 26, 2023, and January 10, 2024. Each of the agreements provides that the loan is payable on demand, and charges interest. Additionally, each loan agreement states that “commission due upon land purchased by Thomasfield on deals brought in by Ricky Shaw will be used as payment towards this loan”.

[23] Mr. Krizsan confirmed that as of June 3, 2025, Thomasfield had loaned Mr. Shaw \$103,000 since the start of his bankruptcy proceeding. Mr. Krizsan produced a promissory note dated April 30, 2025 in the amount of \$16,000 as an example of such a loan. The maturity date was April 30, 2027, and “any commissions owing by the Lender to the Borrower prior to the maturity date shall be applied as an offset against the Principal Amount and accrued interest”. This loan bears interest at 10% per annum, calculated annually, not in advance. Mr. Shaw is entitled to prepay all or part of the outstanding balance at any time, without notice, bonus, or penalty.

[24] Mr. Shaw states that the loans “were not issued in exchange for future services. Any repayment of the loan was understood to come from my own future means, including the potential of earning consulting fees should I find viable real estate opportunities, but this was not guaranteed.” Mr. Shaw noted that “[w]hile I have performed consulting services for Thomasfield, the loans were separate, distinct financial transactions not linked to invoiced work.”

Discussions About Receiving Loans While Bankrupt

² Handwritten notes on the agreement says that \$33,402.44 of the principal amount was repaid from a commission earned by Mr. Shaw.

[25] Mr. Shaw says that on January 27, 2024, he spoke with Michele Dunbar, a senior insolvency advisor for BDO, and asked her if he could borrow money during his bankruptcy. Her answer was that “if you can find someone to loan you money, it is okay, as long as you tell them you are in bankruptcy.”

[26] Mr. Shaw says that he relied on this advice and was not told that any amounts he borrowed could be considered to be income.

[27] Mr. Ihnatiuk says that Mr. Shaw “did not inform the Trustee that he would be seeking monthly loans from Thomasfield”.

[28] Mr. Krizsan states that Mr. Shaw asked him if he could borrow money from Thomasfield during his bankruptcy. Mr. Krizsan asked if Mr. Shaw was allowed to do so and requested written confirmation from the Trustee. Mr. Shaw showed Mr. Krizsan an e-mail exchange he had with Ms. Dunbar dated April 10, 2024 where Mr. Shaw asked whether Thomasfield is “allowed to do a loan to me. Thomasfield has asked for clarification on that.” Mr. Dunbar responded that “[i]t is totally up to Thomasfield. You are allowed to apply for loans as long as you disclose that you are in a bankruptcy.”

[29] Following the discovery of the monthly deposits from Thomasfield, Mr. Shaw and Louise Woodfine, a BDO insolvency analyst, discussed the loans from Thomasfield on July 23, 2024. Ms. Woodfine noted in an e-mail that she would “bring this information to the attention of your Trustee per BDO Committee of Excellence Income and Expense Team guidelines.”

[30] On September 17, 2024, Mr. Shaw received an e-mail from Ms. Woodfine that said that the deposits would be considered as income, as “taking loans while in bankruptcy goes against the rehabilitation principal”. As a result of this classification, Mr. Shaw would have average monthly surplus income payments of approximately \$4,150.

[31] Mr. Shaw exchanged e-mails with Ilan Kibel, a trustee with BDO, on that same day. Mr. Kibel said that “you are entitled to borrow funds after filing for bankruptcy protection, provided you disclose that you are bankrupt.” Mr. Kibel asked how Mr. Shaw intended to repay the borrowed funds. Mr. Shaw’s response was that “both myself and Thomasfield are confident that the loans can be repaid by me procuring real estate opportunities for Thomasfield in the future.”

Legal Principles

Principles of Statutory Interpretation

[32] The issue before the Court concerns the interpretation of the BIA. The modern principles of statutory interpretation require the Court to consider the words used in legislation “in their entire

context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”³

[33] The Court must interpret statutory language “according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole.”⁴ The Court does not need to address text, context, and purpose separately or in a formulaic way, as these elements are closely related or interdependent.⁵

[34] The text of the statute remains the anchor of the interpretative exercise. However, the plain meaning of the text alone is not determinative, and a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms.⁶

[35] Section 12 of the *Interpretation Act* directs that “every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

[36] With respect to interpreting the BIA, the Supreme Court of Canada has held that, while it is not “business legislation in the strict sense, [it] clearly has its origins in the business world. Interpretation of it must take these origins into account. It concerns relations among businessmen, and to interpret it using an overly narrow, legalistic approach is to misinterpret it.”⁷

Purposes of Surplus Income

[37] Section 68 of the BIA addresses the treatment of a bankrupt’s salary, wages or other remuneration while they are bankrupt. It is a substantive provision that is intended to operate as a complete code.⁸

[38] When an individual files for bankruptcy, the trustee in bankruptcy is required to calculate the bankrupt’s “total income” under section 68, and then determine whether the bankrupt has any “surplus income” that must be paid to the trustee for the benefit of the bankrupt’s creditors.

[39] The provision is aimed at ensuring that those bankrupts with the financial means to contribute to their bankruptcy estates do so in order to maximize the return to their creditors.⁹

[40] “Total income” is defined in subsection 68(2)(a) of the BIA as follows:

³ *Piekut v. Canada (National Revenue)*, 2025 SCC 13, para. 42 [citations omitted].

⁴ *Ibid.*, para. 43 [citations omitted].

⁵ *Ibid.*

⁶ *Ibid.*, para. 45 [citations omitted].

⁷ *A. Marquette & Fils Inc. v. Mercure*, 1975 CanLII 195 (SCC), [1977] 1 S.C.R. 547, 1975 CarswellQue 51, para. 16.

⁸ *Marzetti v. Marzetti*, [1994] 2 S.C.R. 765, 1994 CarswellAlta 346, para. 57.

⁹ The Honourable Mr. Justice Lloyd W. Houlden, Mr. Justice Geoffrey B. Morawetz, Dr. Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada, 4th Edition* (Thomson Reuters Westlaw Edge Canada), §5:265.

(a) includes, despite paragraphs 67(1)(b) and (b.3), a bankrupt's revenues of whatever nature or from whatever source that are earned or received by the bankrupt between the date of the bankruptcy and the date of the bankrupt's discharge, including those received as damages for wrongful dismissal, received as a pay equity settlement or received under an Act of Parliament, or of the legislature of a province, that relates to workers' compensation; but

(b) does not include any amounts received by the bankrupt between the date of the bankruptcy and the date of the bankrupt's discharge, as a gift, a legacy or an inheritance or as any other windfall.

[41] "Surplus income" means the portion of the bankrupt's total income that exceeds the standard amounts established by the OSB of what is necessary to enable a bankrupt individual to maintain a reasonable standard of living, taking into account the personal and family situation of the bankrupt.

[42] The phrase "salary, wages or other remuneration" is to be interpreted broadly by the Court.¹⁰ The Court should adopt a purposive approach in determining whether a particular receipt is income for the purposes of section 68.¹¹

[43] The courts have repeatedly decided the issue of whether amounts constitute total income by examining the nature or character of the asset to determine the treatment accorded under the BIA.¹²

[44] In *Millin, Re*, the British Columbia Supreme Court held that the revenues described in the definition of total income "were said to be a substitution for income, akin to income, in the nature of income or to have retained its (previous) character of income."¹³ This quote was cited favourably by the Court of Appeal for Ontario in *Conforti, Re*.¹⁴

[45] The Court of Appeal listed "lost wages, disability payments, severance payments, and income tax refunds" as examples of payments that have been held to be encompassed by subsection 68(2)(a) of the BIA.¹⁵

[46] In *Bankruptcy and Insolvency Law of Canada*, the learned authors listed the following additional examples of amounts held to constitute total income: "pay equity payments made by the federal Crown, even though the civil servant no longer works for the federal government... support

¹⁰ *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, 1997 CarswellMan 455, paras. 67-68.

¹¹ *Conforti, Re*, 2015 ONCA 268, para. 30.

¹² *Julyan v. Deloitte & Touche*, 2009 SKQB 321, 2009 CarswellSask 617, para. 16.

¹³ *Millin, Re*, 2005 BCSC 1082, 2005 CarswellBC 1794, para. 34.

¹⁴ *Conforti, Re*, 2015 ONCA 268, para. 23.

¹⁵ *Ibid.*

payments to farmers under the AIDA program... [and] payment in excess of income tax limits from a pension plan on termination of employment”.¹⁶

[47] The term “income” has been commonly defined to mean “a gain or recurrent benefit usually measured in money that derives from capital or labor”¹⁷ and “money that is earned from doing work or received from investments”.¹⁸

Analysis

[48] I have carefully considered the evidence of the Trustee, Mr. Shaw and Mr. Krizsan regarding the relationship between Mr. Shaw and Thomasfield.

[49] I understand the Trustee’s position on the matter and why it sought directions from the Court, given that Mr. Shaw does provide consultancy services to Thomasfield and can repay the loans through earning commissions to be paid to him by Thomasfield on a successful land development transaction. However, when considering the relationship as a whole, I do not see the amounts to be advances for future work to be performed by Mr. Shaw.

[50] As Mr. Shaw notes, there is no guarantee that he will ever be able to earn a commission to repay the amounts advanced to him by Thomasfield. This is exactly what occurred with respect to the \$170,000 that Thomasfield advanced to Mr. Shaw between October 19, 2021, and January 10, 2024.

[51] During that more than two-year period, Mr. Shaw was only able to earn commission of \$33,402.44 that reduced the principal amount he received from Thomasfield. The remaining \$136,597.56 continued to be owed by Mr. Shaw to Thomasfield when he filed for bankruptcy, and Thomasfield’s proof of claim for this amount, together with \$9,981.44 in accrued interest, was accepted by the Trustee as a proven claim under the BIA.

[52] The uncertainty of Mr. Shaw ever being able to source a land deal that may earn him a commission weighs strongly against these amounts being considered to be income. These land deals were separate and apart from the consulting work he did for Thomasfield, which he invoiced on a monthly basis and was paid by Thomasfield.

[53] Additionally, the advances have most of the common indicia associated with loans, such as the amounts accrue interest, they have a fixed term and can be repaid by Mr. Shaw at any time. It is difficult to consider these amounts to be income if Mr. Shaw can repay the amounts owed to Thomasfield by obtaining a loan from a different lender or he is able to generate funds through any other means.

¹⁶ The Honourable Mr. Justice Lloyd W. Houlden, Mr. Justice Geoffrey B. Morawetz, Dr. Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada, 4th Edition* (Thomson Reuters Westlaw Edge Canada), §5:267.

¹⁷ *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/>; retrieved December 8, 2025.

¹⁸ *Cambridge Dictionary*, <https://dictionary.cambridge.org/>; retrieved December 8, 2025.

[54] I acknowledge that the definition of “total income” contains extremely broad language to capture “revenues of whatever nature or from whatever source”. However, that language cannot itself convert an amount from being a loan to being income. There must be some connection between the advances and amounts that courts have held to fall within the definition of total income, such as lost wages, disability payments, severance payments, and income tax refunds.

[55] Each of those amounts are akin to income or are substitutes for income, salary or wages. Such amounts are typically not required to be repaid by the recipient. While Mr. Shaw does use the funds in the same way as one traditionally would use his income, that is generally true of loans received by individuals for personal use. I do not view Mr. Shaw’s use of the funds as changing their nature as a debt owed to Thomasfield.

[56] To interpret the Thomasfield advances as income would lead to the result that Mr. Shaw would be required to repay portions of the advances twice: once to the Trustee as surplus income, and then to Thomasfield. This would not be a fair or equitable result. Again, once income, unlike loans, generally do not have to be repaid by the recipient to the provider of the funds.

[57] I note that the parties did not provide to the Court any examples of jurisprudence where a court was required to determine whether an amount constituted a liability or income under the definition of total income in the BIA. I was unable to find any cases during my own review of the case law for this section.

[58] The Trustee also raises the issue of Mr. Shaw violating the rehabilitation principle of bankruptcy law by incurring significant debt during his bankruptcy proceeding to fund his lifestyle. It is well acknowledged that one of the two main purposes of the BIA is to financially rehabilitate the bankrupt, which involves allowing an honest but unfortunate debtor to obtain a discharge of their debts and give them a “fresh start” free of debt.¹⁹

[59] While the rehabilitation principle is no doubt an important perspective to take into account when interpreting the BIA, I do not see its relevance in the interpretation of total income under the BIA. The focus of the interpretation exercise is to determine whether the amount at issue is akin to income, salary or wages, which I have found that the loans made by Thomasfield fail to be. The issue of Mr. Shaw taking on additional debt may be an issue for the Court to consider in the event that Mr. Shaw has a discharge hearing.

[60] In determining this issue, I have also taken into consideration the fact that Mr. Shaw was advised by the Trustee, in response to his request for them to clarify whether Thomasfield could loan him funds, that, in the words of the BDO employee, “totally up to Thomasfield. You are allowed to apply for loans as long as you disclose that you are in a bankruptcy.”

¹⁹ *Piecut v. Canada (National Revenue)*, 2025 SCC 13, para. 26 [citations omitted].

[61] In my view, it would be unfair to require Mr. Shaw to pay a portion of the funds he received from Thomasfield when he relied on the advice of the Trustee that he could receive such a loan and was not informed of the possibility that such amount could be considered to be income.

Disposition

[62] For the reasons set out above, the amounts advanced by Thomasfield to Mr. Shaw since he filed for bankruptcy do not constitute “total income” under subsection 68(2)(a) of the BIA.

DATE: December 9, 2025

Associate Justice Rappos