COURT OF KING'S BENCH
FOR SASKATCHEWAN

BANKRUPTCY DISCHARGE GUIDE

Part I: Obtaining a Discharge From Bankruptcy

This guide provides general information about obtaining a discharge from bankruptcy in the Court of King's Bench for Saskatchewan. It does not explain the law or provide legal advice. For more detailed information about legal options and strategies, you may wish to consult with a lawyer.

Nothing in this guide constitutes legal advice and may not be cited as an authority in any legal proceeding.

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INTRODUCTION

This guide is for people who remain in bankruptcy and:

(1) Previously had their Licensed Insolvency Trustee [Trustee] discharged by the Court;
(2) Have not been granted a discharge from bankruptcy; and
(3) Whose Trustee is not prepared to assist with another application for discharge or is no longer in business.

If your Trustee was discharged but you were not discharged from bankruptcy, it is your responsibility to arrange for your discharge.

Before making an application, you should check with your former Trustee to see if they would be willing to assist in a discharge application. If your former Trustee is no longer in business, you should check with a different Trustee or a lawyer to see if assistance can be arranged.

It is generally recommended that bankrupt individuals try to use the services of a Trustee or a lawyer for discharge applications, however this guide is intended to assist those who cannot afford to retain those services.

The following sections will explain the difference between a discharge of a Trustee and a discharge of a bankrupt person from bankruptcy.

DISCHARGE OF A TRUSTEE

Once a Trustee has fulfilled their duties under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, with respect to the administration of a bankrupt's property, a Trustee is required apply for their discharge upon completion of the administration of a bankruptcy.

The Trustee's discharge may occur even if a bankrupt person did not receive a discharge from bankruptcy.

DISCHARGE OF A BANKRUPT PERSON

The discharge of a bankrupt person from bankruptcy is different from the discharge of a Trustee.

A discharge from bankruptcy can occur automatically or through a court order. Once a discharge takes effect, a bankrupt person is no longer bankrupt and is legally released from paying debts incurred before the date of bankruptcy.

However, certain types of debt set out in s. 178 of the *Bankruptcy and Insolvency Act* are not released by a discharge.

Many bankrupts receive automatic discharges, however, they do not once a Notice of Opposition to their discharge is filed with the Official Receiver. These notices state the grounds for the opposition and can be filed by the Superintendent of Bankruptcy, the Trustee, or a creditor.

If an opposition is filed, then the discharge application must be heard by the Court.

For example, the failure to do certain things such as not providing income and expense statements, attending the required counselling sessions, and/or paying your surplus income are the most common grounds for Trustees to file a Notice of Opposition.

In most cases where a bankrupt does not receive a discharge at the time of the court application, it is because they still have not done what is required.

The judge or Registrar in Bankruptcy who heard the application in court may have therefore adjourned the application indefinitely (sometimes called *sine die*) or imposed certain conditions that had to be met before a bankrupt was entitled to a discharge.

MAKING APPLICATIONS TO THE COURT

Documents filed with the Court must meet the Court's standards.

When you submit your completed documents, court staff will check to make sure they meet the minimum standards before accepting them for filing. It is your responsibility to include all other information required by the Court and ensure it is correct.

All applications, regardless of whether they are set to be heard in Regina, Saskatoon, or virtually, are made to:

Court of King's Bench for Saskatchewan
2425 Victoria Avenue
Regina, Saskatchewan
S4P 3V7

The Court does not accept filing via email in any matters. Applications must be sent by mail or courier.

As this filing information is subject to change, please refer to the Courts of Saskatchewan website to ensure that the above is still up to date.

PREPARING AN APPLICATION FOR DISCHARGE

STEP 1 - Get a Copy of the Court File

The following information will help you if you are making a court application for your discharge from bankruptcy without the assistance of the Trustee or a lawyer. The first step is to locate your bankruptcy court file by contacting the Local Registrar's Office in Regina. You can do so by emailing bankruptcy@skkb.ca or calling 306-787-8982.

You must look through your file and find:

- Your court file number; (Ex: BKY-RG-12345-2026 or 12345)
- Your estate number (Ex: 22-123456 or 23-123456);
- The Trustee's Report "Form 82 – Report of Trustee on Bankrupt's Application for Discharge" (also called a Section 170 Report);
- A copy of any court order that was made at the previous discharge hearing; and
- If applicable, the fiat(s) (written decision(s)) prepared by the Registrar in Bankruptcy or a judge at any previous discharge hearing.

You should review the above materials to determine what conditions, if any, that the Court has imposed and what remains incomplete.

STEP 2: Select a Hearing Date

You must select a date for the hearing of your discharge application far enough in advance you can provide the required notice.

The Bankruptcy Court sits only in Regina and Saskatoon.

You can find available dates on the Court's website at: https://sasklawcourts.ca/kings-bench/bankruptcy/

STEP 3: Prepare Your Documents

You will need to prepare the following documents. Examples of each of these are found at the end of this guide:

- Cover letter;
- Notice of Application;
- Your sworn affidavit
- Draft Order for Discharge; and
- An Affidavit of Service.

The sample documents contain an explanation of what the document is intended to accomplish.

(a) Notice of Application

The Notice of Application states:

- The court file number and estate number;
- The date, time, and place of the hearing;
- What you are seeking (a discharge in some form from bankruptcy);
- Why you feel the Court should grant you a discharge;
- The applicable law and rules to your discharge case; and
- Your contact information.

An application for discharge is first brought before the Court by filing a Notice of Application.

You need to select a date, time, and location for the hearing in order to complete the Notice of Application.

The *Bankruptcy and Insolvency General Rules* CRC, c 368 [*BIA Rules*] call this document a Notice of Motion, however in Saskatchewan, it is now called a Notice of Application.

(b) Your Affidavit (Affidavit of the Bankrupt)

An affidavit is a piece of sworn or affirmed written evidence that contains important information about your case.

Please refer to the Court's website for more information in the Affidavit Guide: https://sasklawcourts.ca/self-represented-litigants/

The content of affidavits must be limited to facts relevant to the matter that are within your first-hand knowledge.

Documents can also be attached as exhibits.

Your affidavit should state what led up to your bankruptcy, what happened since your Trustee was discharged, and what your financial situation is at the present time.

Your affidavit should only include evidence that relates specifically to your application for discharge.

The Court has developed a standard form of affidavit that is to be used for your discharge application. However, each person's case is unique and there may be a need to include additional information or less information if that is relevant to your case. Some important points to think about include:

- Why were you not discharged?
- Why did you not comply with any previous Court orders?
- Have you paid some or all of the debts since your original bankruptcy?
- Which terms have you complied with?

(c) A Draft Order for Discharge

Template orders for discharge from Civil Practice Directive #4 can be found in Part II of this guide and must be filled in and included in your application package.

Civil Practice Directive #4 requires that any addition, deletion or variation to a template order filed with the Court must be underlined or highlighted in bold letters and brought to the attention of the presiding judge.

STEP 4: Swear or Commission your Affidavit

You should attach as exhibits to the affidavit any documents relevant to the application and referenced in your affidavit, including a statement setting out your current income, expenses, assets, and liabilities. Each exhibit must also be commissioned.

You will have to swear or affirm your affidavit in front of a lawyer, a commissioner of oaths, a notary public, or a designated person at the Local Registrar's Office nearest to you.

Court staff have additional information on how to complete affidavits, if required.

STEP 5: Serve Your Documents

At minimum, you must serve:

(1) Your former Trustee or successor firm to the former Trustee;
(2) Any creditors who filed an opposition to your discharge or who attended an earlier discharge hearing; and
(3) The Office of the Superintendent of Bankruptcy [OSB] with:

- The Notice of Application;
- Your Affidavit of Service;
- The Draft Order;
- Acknowledgements of Service if you chose to use them; and
- Other documents you intend to rely upon.

Please note that the Affidavit of Service is not sent out to recipients in this step.

The Notice of Application must be received by the persons to be notified at least four (4) days before the hearing if the document is delivered personally or sent by fax or electronic transmission (e-mail). If it is couriered or mailed to the other parties, it must be sent at least ten (10) days before the hearing. Time limits are set out in the *BIA Rules* (ss. 6(1)-(2)). It is a good idea to give the other parties as much notice as possible about the hearing date.

Creditor address information can typically be located in your previous bankruptcy documents.

If your former Trustee is no longer in business, you can contact the OSB to find out who the successor firm is. See: https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/about-osb/make-enquiry

The OSB's address for service in Manitoba is:

Office of the Superintendent of Bankruptcy
4th Floor – 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5
Toll free telephone: 1-877-376-9902 or by email at:
osbservice-bsfservice@ised-isde.gc.ca)

For more information on contacting the OSB see: https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en/about-osb/how-serve-or-notify-office-superintendent-bankruptcy-legal-proceedings

You must remember when and how you served the above entities so you can complete your Affidavit of Service.

STEP 6: Prove Service

To prove service of your package of documents, you must:

(1) Prepare an Affidavit of Service and have it commissioned; or
(2) File completed acknowledgements of service from recipients of your package.

Typically, it is much easier to prepare and commission an Affidavit of Service to prove service.

The Affidavit of Service or the Acknowledgements of Service are filed with the Court when you file the rest of your documents.

In order for your matter to proceed, service **must** be proved.

STEP 7: File Your Documents

Your documents, including a cover letter and the completed Affidavit of Service, must be filed with the Court in hard copy a minimum of one (1) day before the hearing at the following address:

Court of King's Bench for Saskatchewan
2425 Victoria Avenue
Regina, Saskatchewan
S4P 3V7

Even if the matter is scheduled in Saskatoon, filing must take place through the above Regina address at this time.

The Court **strongly encourages** the filing of applications and materials well in advance of the deadline.

The applicable filing fees are: $10 for Summary Administration bankruptcies; and $50 for Ordinary Administration bankruptcies. The type of bankruptcy is commonly found on the Certificate of Assignment (Form 35).

Payment can be made by debit card, credit card, or certified cheque (note: personal cheques are not accepted).

STEP 8: Attend the Hearing

You must attend court in person or ask permission to appear by video or telephone in advance for good reason.

Discharge hearings are typically conducted by an Associate Judge sitting as a Registrar in Bankruptcy, although a judge of the Court may also conduct them.

When your application is heard, you will have an opportunity to present your case in court.

The following is the typical procedure:

1) You explain why you believe you are entitled to the order you are seeking, for example, an absolute discharge from bankruptcy;
2) Anyone opposing your application explains their position;
3) The presiding judge may ask questions relating to the affidavits and documents you have filed in support of your case;
4) Any opposing party presents their argument in the same way;
5) You may be asked to be examined (give evidence/verbal testimony) under oath.
6) If your application is unopposed, then procedure stages 4 and 5 may not take place.

Typically, evidence in Bankruptcy Court is given in affidavit form or in the form of Trustee reports as permitted by the *Bankruptcy and Insolvency Act*. In some circumstances, sworn verbal testimony (*viva voce*) can be received as evidence through various examinations in Court.

Should documentary evidence be brought forward in court without necessary service, the Court may adjourn the application to provide for service or dismiss the application.

STEP 9: Appeals

Consult s. 30 of the *BIA Rules* if you are considering an appeal from a decision.

STEP 10: Issuance of the Order

The Court must formally issue an order for it to be effective.

If you did not prepare your order before the hearing, you must prepare it after the hearing and submit the order to the Local Registrar's Office.

If there is a possibility of an appeal, the Court may delay issuing or delivering the discharge order until the ten (10) day appeal period has expired.

A copy of the signed and entered Order must be sent to the Office of the Superintendent of Bankruptcy (OSB) to update their records.

Note: Credit Bureaus and Canada Revenue Agency obtain their bankruptcy information from the OSB.

GENERAL GUIDELINES FOR APPEARING IN COURT

Conducting Yourself in Court

When you are presenting your position at the hearing, remember these general guidelines:

- Maintain proper court etiquette including **no** use of mobile phones, **no** recording proceedings and no smoking, eating or drinking (other than water provided by the Court);
- Tell the judge what order you are seeking;
- Outline the facts necessary to support your application;
- Set out the law on the subject;
- Explain how the law applies to the facts of your case;
- Indicate that the application of the law to the facts of your case requires the judge to make the order requested;
- Try not to switch back and forth between the facts and law;
- Stand when you are speaking and making your presentation to the judge.

What the Court is Looking For

- The judge will consider many factors at your application for discharge.

- You must, to the best of your ability, comply with your duties under the *Bankruptcy and Insolvency Act* and any court orders, and be prepared to explain to the Court the reason for any non-compliance.

    For example: if you are not able to provide the Court with the details and evidence of your income and expenses during the entire period of your bankruptcy, then the Court may want to review your income tax returns for that period.

- If the Court imposed conditions in an Order of Conditional Discharge, you must have complied with those conditions to the best of your ability. If the conditions were not complied with as required, you may consider an application to vary or rescind the conditions if there is no reasonable probability of you being able to comply with those conditions (see ss.172(3) and 172.1(6) of the *Bankruptcy and Insolvency Act*).

    For example: if the Court ordered that you pay a certain sum of money to the trustee by a certain date, and you have made the payment but not by the date required, you may apply to the Court to vary this date.

• Your conduct before your assignment into bankruptcy and during bankruptcy is an important factor and the Trustee's report will provide some of that information.

> For example: the Trustee's report will outline if you did not attend the required financial counselling sessions, did not file required statements of income and expense, and/or if you did not pay required surplus income to the trustee for the benefit of your creditors. The judge will also consider your current income.

• The Court may adjourn the discharge hearing if, for example, more information is required. In that case you will be required to come back.

• If a discharge hearing proceeds, after hearing submissions, the Court may render a decision from the bench, or it may "reserve" the decision – meaning that it will be provided later.

Types of Discharges

At the end of the hearing, the Judge may grant one of the following types of discharges:

(a) **Absolute Discharge**: when an absolute discharge is granted, you will be released from the obligation to repay the debts you had as of the date of your bankruptcy. Note that you are still obliged to pay certain debts, as described previously.

(b) **Conditional Discharge**: if you get a conditional discharge, you must do certain things before you are entitled to an absolute discharge. For example, you may have to pay a certain amount of money to your Trustee over a period of time.

(c) **Suspended Discharge**: a suspended discharge is where the Court sets a specific date in the future when your absolute discharge becomes effective. Although no further court hearing is required, you are not discharged until that date.

> Note: The Court may grant an order of discharge that contains a suspension period as well as conditions which need to be satisfied.

(d) **Refusal of Discharge**: in this case, you will have to make another application for discharge after a reasonable period of time, often set by the Court in the order refusing your discharge. If no period is specified in the order, the *Bankruptcy and Insolvency Act* provides that another application may not be brought for at least twelve (12) months.