S.C.C. File No. 40782

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

IZABELA PIEKUT

APPELLANT

- and **–**

HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE

RESPONDENT

FACTUM
(IZABELA PIEKUT, APPELLANT)

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – CONCISE OVERVIEW OF POSITION AND CONCISE STATEMENT OF FACTS

A. Overview of the Appellant's Position

1. Government student loans permit student borrowers, who have little, no or bad credit history, or with no family financial assistance or financial backing, to finance their studies and repay those amounts back benefiting future students. Students may have no income or be low-income individuals and receive access to government student loans to finance their studies with the goals that they will become contributing members of society. In short, student borrowers who have no means or limited means to borrow privately to finance their studies rely on the state to provide financial assistance by way of government student loans. These are unique form of crown debts and enjoy a special status in bankruptcy proceedings in that they may be released on 7 years from ceasing to be a full or part-time student.

2. A controversy has arisen on the interpretation of the timing of when this seven year begins to run: seven years from the date of the advancement of the loan or seven years from the date the student borrower ceases to be a student? In this appeal, the Appellant asks this court what the correct interpretation to section 178(1)(g) of the *Bankruptcy and Insolvency Act* **("*BIA*")**.[1]

3. Section 178(1) represents a deliberate exception by parliament to narrow the fresh start principle that certain liabilities will survive a bankruptcy or *BIA* proposal. Section 178(1) contains the "kinds of claims which society (through the legislators) considers to be of a quality which outweighs any possible benefit to society in the bankrupt being released of these obligations"[2] Crown debts such as tax debts are not included in s. 178(1). Even so, government student loans are unique in that these crown debts will both survive a discharge or proposal but can be discharged in a bankruptcy or *BIA* proposal, subject to timing constraints.

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[1] *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 ["*BIA*"] s. 178(1)(g).
[2] *Cruise Connections Canada v. Szeto*, 2015 BCCA 363 at para. 14.
citing *Jerrard v. Peacock (1985)*, 61 A.R. 161, [1985] A.J. No. 513 (K.B.) at para. 41.

4. It is this issue of timing that is central to this appeal, and it falls into two interpretations: on how to determine when the seven years is calculated: a single date approach or multiple date approach.

5. The single date approach reflects that there is a single definitive date that a student loan borrower is a student that the seven years is calculated. A multiple date approach reflects the interpretation that there can be multiple ceasing dates and that the seven years operates from the advancement of the loan.

6. Courts across the country have been divided on this issue and asks this to court to interpret this provision and harmonize the interpretation across Canada.

B. Statement of Facts

7. The facts as stated in the reasons for judgment of the Court of Appeal are as follows:

8. Between September 1987 and October 1994, Ms. Piekut obtained a series of student loans through a federal government program. She graduated with a degree from the University of Calgary in 1994.[3]

9. In 1995, Ms. Piekut obtained a teaching diploma from the University of Calgary.[4]

10. Ms. Piekut obtained two further student loans through a federal government program in 2002 and 2003. She earned a master's degree from the University of British Columbia in 2003.[5]

11. In 2008, Ms. Piekut enrolled in self-funded studies at the University of British Columbia on a part-time basis. In 2009, she earned a second master's degree.[6]

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[3] *Piekut v. Canada (Minister of National Revenue)*, 2023 BCCA 181 at para. 5 ["*Piekut BCCA*"], Appellant's Record ["AR"], Tab 4, p. 8.
[4] *Ibid.* at p. 8.
[5] *Ibid.* at p. 8.
[6] *Ibid.* at p. 8.

12. In October 2013, Ms. Piekut made a consumer proposal under s. 66.11 of the *BIA*. A certificate of full performance of that proposal was granted in December 2017.[7]

13. In June 2019, Ms. Piekut applied to the British Columbia Supreme Court for a declaration that, by operation of law, she had been released from all debt and interest associated with her government student loans. [8]

14. As at February 2020, those loans amounted to approximately $28,561.[9]

15. The Province of British Columbia applied for and was granted intervenor status. The Supreme Court application by Ms. Piekut was dismissed finding that the court was bound by the principles of horizonal stare decisis and refused to depart from the prevailing law in British Columbia following the single date approach espoused in *(Re) Mallory*.[10]

16. On January 20, 2022, Madame Justice Felon of the British Columbia Court of Appeal granted leave to appeal on the issue of the interpretation of section 178(1)(g).[11] On appeal, the Province of British Columbia was granted intervenor status on the appeal. The appeal was dismissed,[12] which is subject to this appeal.

17. Additional facts are as follows:

a. The federal student loan enactments in effect prior to 1994 were the *Canada Student Loans Act* RSC 1985 s-23[13] **("*CSLA*")** and regulations SOR 93-392[14] **("*CSLA Regulations*").**

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[7] *Ibid.* at p. 8.
[8] *Ibid.* at p. 8.
[9] *Ibid.* at p. 8.
[10] *Ibid.* at pp.13-14; *Mallory (Re)*, 2015 BCSC 5 ["*Mallory*"].
[11] *Piekut v. Canada (Minister of National Revenue)*, 2022 BCCA 50 at para. 16.
[12] *Piekut BCCA,* AR at pp. 7-12.
[13] *Canada Student Loans Act*, R.S.C., 1985, s-23 [*"CLSA*"].
[14] *Canada Student Loans Regulations*, SOR/93-392 ["*CSLA Regulations*"].

b. The federal student loan enactments in effect in 2002 and 2003 were the *CLSA* and *CLSA Regulations*, and the *Canada Student Financial Assistance Act* SC 1994, c. 28 [15] **("*CSFAA*")** and regulation SOR 95-329[16] **("*CFSAA Regulations*").**

c. Those material provisions as they applied to the Appellant were the same from regulation to regulation and from time to time.

PART II - QUESTIONS IN ISSUE

18. The courts below erred in or and mixed fact and law, or alternatively, the court below erred in law.

19. What is the correct interplay between the phrase "date on which the bankrupt to be a ceased to be a full- or part-time student" under *BIA* s. 178(1)(g)(i) and the scheme of the regulations under the *CSLA* and/or the *CSFAA* specifically noting that under those regulations it is specifically contemplated that a student may cease to be a full- or part-time numerous times throughout studies, or afterward, and then apply to be reinstated to that status;

20. Whether, or when she may have been reinstated to that status, or when she again ceased to have that status never to be reinstated to it, the courts below lacked a basis in fact on which to fix a date under s. 178(1)(g)(i) for purposes of determining whether *BIA* s. 178(1)(g) applied to her consumer proposal or not;

21. Whether a creditor has the onus to prove by evidence that a person who has had a consumer proposal approved by her creditor and the court is by *BIA* s. 66.28 is nevertheless subject to s. 178(1)(g).

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[15] *Canada Student Financial Assistance Act*, S.C., 1994, c.28 ["*CFSAA*"].
[16] *Canada Student Financial Assistance Regulations*, SOR/95-329 ["*CFSAA Regulations*"].

PART III - STATEMENT OF ARGUMENT

A. Introduction - The modern approach to statutory interpretation

22. This court has repeatedly affirmed Driedger's classic statement of the correct approach to a case which turns on statutory interpretation:

> Today there is only one principle or approach, namely, the words of an Act are to. be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[17]

23. This well-known modern principal of statutory interpretation has been approved many times and its application was commented on by this Court.[18] This court confirmed that the plain meaning of these words alone are not itself determine and must be tested and confirmed against other indicators of legislative intention – context, purpose and relevant legal norms.

24. It has also been stated by this Court that "it [the Bankruptcy Act] concerns relations among businessmen, and to interpret it using an overly narrow, legalistic approach is to misinterpret it."[19]

B. Fresh Start Principle in the BIA

25. The purpose of the *BIA* has been considered as having two fundmental policy purposes:

> Parliament enacted the *BIA* pursuant to its jurisdiction over matters of bankruptcy and insolvency under s. 91(21) of the *Constitution Act, 1867*[20]. The *BIA*, notably through the specific provisions discussed below, furthers two purposes: the equitable distribution of the bankrupt's assets among his or her creditors and the bankrupt's financial rehabilitation.[21]

26. The case on appeal engages the second purpose—the "fresh start" purpose:

> The second purpose of the *BIA*, the financial rehabilitation of the debtor, is achieved through the discharge of the debtor's outstanding debts at the end of the

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[17] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21.
[18] *La Presse inc. v. Quebec*, 2023 SCC 22 at paras. 22 to 24.
[19] *Mercure v. Marquette & Fils Inc.*, 1975 CanLII 195 (SCC) at p. 556.
[20] *Constitution Act, 1867 (UK)*, 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, Appendix 11, No. 5.
[21] *Husky Oil Operations Ltd. v. Minister of National Revenue*, 1995 CanLII 69 (SCC) at para. 7.

> bankruptcy.[22] This, in effect, gives the insolvent person a "fresh start", in that he or she is "freed from the burdens of pre-existing indebtedness": Wood, at p. 273; see also *Industrial Acceptance Corp. v. Lalonde*, 1952 CanLII 2 (SCC), [1952] 2 S.C.R. 109, at p. 120. This fresh start is not only designed for the well-being of the bankrupt debtor and his or her family; rehabilitation helps the discharged bankrupt to reintegrate into economic life so he or she can become a productive member of society: Wood, at pp. 274-75; L. W. Houlden, G. B. Morawetz and J. Sarra, *Bankruptcy and Insolvency Law of Canada* (4th ed. rev. (loose-leaf)), at p. 6-283. In many cases of consumer bankruptcy, the debtor has very few or no assets to distribute to his or her creditors. In those cases, rehabilitation becomes the primary objective of bankruptcy: Wood, at p. 37.[23]

27. A discharged bankrupt achieves a fresh start through the release of liabilities and obligations under s. 178(2) or a *BIA* consumer proposal. A similar provision applies to debtors who avail themselves of a *BIA* consumer proposal and complete the proposal. This Court in *Schreyer v. Schreyer*, 2011 SCC 35 (CanLii) 2 SCR 605[24] stated the underlying policy objectives and issues involving Parliament's pursuit of balancing the fresh start principle:

> The very design of insolvency legislation raises difficult policy issues for Parliament. Legislation that establishes an orderly liquidation process for situations in which reorganization is not possible, that averts races to execution and that gives debtors a chance for a new start is generally viewed as a wise policy choice.
> …
> But it entails a price, and those who might have to pay that price sometimes strive mightily to avoid it. Despite the proven wisdom of the policies underpinning the insolvency legislation, it is understandable that few appreciate the "haircuts" or even outright losses that bankruptcies trigger. So creditors seek to obtain security or third-party guarantees. In other cases, statutory exemptions from the application of the BIA may apply.
>
> As a consequence, the interpretation of the BIA requires the acceptance of the principle that every claim is swept into the bankruptcy and that the bankrupt is released from all of them upon being discharged unless the law sets out a clear exclusion or exemption.[25]

28. The fresh start principle is not absolute and must be tapered by Parliament and the legislature's intentions. Subsection 178(1) provides an express list of claims that Parliament has deemed to have societal or political importance that they are not released, instead, will survive a

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[22] *Ibid*.
[23] *Alberta (Attorney General) v. Moloney*, 2015 SCC 51 at para. 36.
[24] *Schreyer v. Schreyer*, 2011 SCC 35, [2011] 2 SCR 605.
[25] *Ibid.* at paras. 19-20.

discharge. Such exemptions include: court-imposed fines, penalties and restitution orders, court awards of damages for intentionally inflicted bodily harm or sexual assault, debts for alimony or maintenance or support; and debts arising out of fraud, and – of course – government student loans which are a form of crown debt and liability.

29. In full, section 178 of the *BIA* reads that:

> **178(1) An order of discharge does not release the bankrupt from**
>
> (a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence, or any debt arising out of a recognizance or bail;
>
> (a.1) any award of damages by a court in civil proceedings in respect of (i) bodily harm intentionally inflicted, or sexual assault, or (ii) wrongful death resulting therefrom; (b) any debt or liability for alimony or alimentary pension;
>
> (c) any debt or liability arising under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse, former common-law partner or child living apart from the bankrupt;
>
> (d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;
>
> (e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;
>
> (f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;
>
> (g) any debt or obligation in respect of a loan made under the Canada Student Loans Act, the Canada Student Financial Assistance Act or any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred
>
> (i) before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or
>
> (ii) within seven years after the date on which the bankrupt ceased to be a full- or part-time student;
>
> (g.1) any debt or obligation in respect of a loan made under the Apprentice Loans Act where the date of bankruptcy of the bankrupt occurred (i) before the date on which the bankrupt ceased, under that Act, to be an eligible apprentice within the meaning of that Act, or 14 (ii) within seven years after the date on which the bankrupt ceased to be an eligible apprentice; or

> (h) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g.1). …
>
> **Claims released**
>
> (2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy
>
> [emphasis added]

30. The full achievement of financial rehibailation is eroded when more liabilities are excluded from the discharge. The more and more liabilities permitted to survive will errode the fresh start of the debtor in returning to commercial life unencumbered by liabilities.This court recognized this balancing sought by parlaiment in *Industrial Acceptance Corp. v. Lalonde* such that:

> the purpose and object of the Bankruptcy Act is to equitably distribute the assets of the debtor and to permit ... his rehabilitation as a citizen, unfettered by past debts. [26]

31. When applying the concept of the fresh start to consumer debtors, they often have few or little assets, and as such the principles of financial rehabilitation weigh more heavily in the analysis. Further, as what will be set out below, is that such an interpretation would lead to student borrowers being punished for returning to further studies and seeking more education concerning dampening a student borrower's further participation in the economy.

32. This is tapered with the intention of parliament under s. 178(1)(g) that in relation to government student loans that student borrowers should wait a period of time before government student loans are automatically included in a *BIA* proceeding to be released. The purposes underlying this provision is that parliament seeks to avoid opportunistic debtors in taking advanctage of insovlency laws to avoid payment of their loans while also taking the benefit of their education and experience with them.

33. Often, student borrowers who avail themselves of bankruptcy or *BIA* proposals would not fall within the definition of an opportunistic debtor. The concern raised by parliament seems to be made towards graduates of potentially lucrative programs in law, medicine or denistry to seek to avail themselves of ridding themselves of their government student loans while also entering into

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[26] *Industrial Acceptance Corp. v. Lalonde*, 1952 CanLII 2 (SCC), [1952] 2 SCR 109.

a well paying profession thereby engaging in abuses of the bankruptcy system and undermining the integrity of the system. This was commented in by Professor Stehpanie Ben-Ishai that:

> [in] Canada, similar concerns about abuse prompted the introduction of the two-year-nondiscarability provision for student loans. For example, Mr. Brian Tobin, during Proceedings of the Standing Senate Committee on Banking, Trade and Commerce, stated, 'We are trying to avoid situations where someone declares bankruptcy simply to get rid of their student loan and then finds a job'. [27]No empirical data has been put forward to justify this contention. Rather, empirical data has demonstrated that this is not the case."[28]

34. Further, studying for and receiving a professional degree alone is not always a guarantee to a lucrative and well paying career. This is illustrated in *A.M.O.G. (Trustee) v. Royal Bank of Canada* where Master Barker sitting as a Registrar in Bankruptcy in the context of a lender opposing a discharge from bankruptcy of a solicitor stated that:

> A.G. made a telling point in reply to Mr. Shouldice's arguments. Most of the cases that consider loans and professional degrees consider medical professionals (some are physicians, as in Sutherland, and some are, for example, chiropractors). I agree with her submission that physicians, in particular, are not really members of "the market economy". They enter a profession that almost guarantees gainful employment. The profession of law does not enjoy such success or assurance, particularly since the economic trauma of 2008. She is a good example of that. She worked hard to get articles in the first place and then a position in private practise. I suspect that her experience in private practise, i.e. the limits to her billing ability and her termination in the face of her illness, is typical. If she cannot, somehow, secure a changed role with her current government employer I am pessimistic that she can continue practising law.[29]

35. Parliament seeks to balance both its crown interests and realizations under s. 178(1)(g), but parlaiment is also seeking to balance the rehabilaitive aims under the *BIA* to strike a proper balance in these provisions that student borrowers can discharge these crown debts after a period of time.

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[27] Ben-Ishai, Stephanie. "Government Student Loans, Government Debts and Bankruptcy: A Comparative Study." Canadian Business Law Journal 44.2 (2006): 228.
[28] *Ibid*.
[29] *A.M.O.G. (Trustee) v. Royal Bank of Canada*, 2014 BCSC 2341 at para. 14.

C. Consumer Proposal provisions governed by Division II of the BIA

36. When an individual files a consumer proposal assisted by a Licensed Insovlency Trustee, a stay of proceedings is imposed against his or her creditors. It is a debtor in possession proceeding and the assets of the debtor that do not vest in the Licecensed Insovlency Trustee. Consumer proposals are only available to individudal debtors – and are unavailable for corporations or other entities. There is also a limit on the amount of debts and liabilities a consumer debtor may include in a consumer proposal. There are upper limits of $250,000 in liabilties except a mortgage on a principal residence.[30]

37. After a proposal is filed, the Administrator will proide a report on the proposal and notice to all creditors who can later vote on the consumer proposal within 45 days. After the 45 days expires, the Administrator will determine whether there are sufficient votes for the proposal to pass, and if so, after 15 days the proposal is considered deemed court approved.[31]

38. If the consumer proposal fails, the debtor will not be bankrupt but is not entitled to make another proposal unless they make a voluntarty assignment into bankruptcy and obtain a discharge, pay their debts in full, or obtain court approval to make a subsequent proposal to his or her creditors. When a consumer proposal is fully performed, the Administration will issue a Certificate of Full Performance, which has the effect of releases all liabilities except those in s. 178(1) unless expressly stated in the proposal and that creditor votes for the proposal.[32]

D. Discharge provisions governed by s. 172 and s. 173 of the BIA

39. Upon an assignent into bankrutpcy, a manditory stay of proceedings is imposed on the insolvent debtor's creditors – both existing and contingent[33] – against the debtor and his or her property under s. 69.3 of the *BIA* and their property vests in their Licensed Insovlency Trustee for the benefit of their creditors.[34]

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[30] *BIA*, s. 66.11.
[31] *BIA*, s. 66.22.
[32] *BIA*, s. 66.28(2.1).
[33] *BIA*, s. 121.
[34] *BIA*, s. 70.

40. During the administration of the bankruptcy, the bankrupt is required to aid the Licensed Insolvency Trustee and also to participate in financial counselling and budgeting to supprot their financial rehabilitation.[35] At the end of the bankrutpcy term, the creditors have the chance to object to the discharge of the bankrupt by seeking conditions, such as a refusal or suspension of the discharge. Upon the discharge being granted, the bankrupt receives a release of all claims that fall within the scope of the proceedings and are no longer enforceable,[36] except those in s. 178(1).

41. A creditor is not without its remedies should their debt not be a liability falling within s. 178(1). The disposition of debts that are not captured by s. 178(1) can be addressed at a discharge hearing before a presider. There is no special requirement for a presider to consider mandatory factors such as those in tax-driven bankruptcies under s. 172.1 for liabilities owed to government student loan authorities.[37]

42. Reprehensible behaviour can be identified during the bankruptcy and be dealt with during the discharge.[38] While singificant debts that survive under s. 178(1) may disinventive the debtor to continue cooperating, the court may impose a substantial conditional order that requires the bankrupt to make payments to the Licensed Iinsovlency Trustee which would then be distributed to the creditors on a *parri passu* basis in accordance with their priority under s. 136.[39]

43. If a government student loan falls outside the seven years, no matter which interpretation is correct, the student loan authorities may still file a Notice of Intended Opposition and seek to oppose the discharge. [40]

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[35] *BIA,* s. 157.1, s. 68 and s. 158.
[36] *BIA*, s. 178(1).
[37] *BIA*, s. 172.1.
[38] *Kozack v. Richter*, 1973 CanLII 166 (SCC), [1974] SCR 832.
[39] *BIA*, s. 136.
[40] See for example *Thrush (Re)*, 2023 BCSC 413 where the His Majesty the King in Right of the Province of Ontario opposed a discharge from bankruptcy under s. 172 of the *BIA* seeking a conditional discharge. After consideration of the relevant principles, the court decided to impose a thirty day suspended discharge form bankruptcy.

E. Subsection 178(1)(g) of the BIA to be read narrowly due to exception to general rule

44. This court should apply an approach that narrowly interprets s. 178(1) as being an exception to the statutory exemption and therefore this section should be interpreted narrowly.[41]

45. However, section 178(1)(g) has proven ambiguous in its interpretation: is it the date on which they ***ultimately*** ceased to be a full- or part-time student? Or the date or dates on which they ceased to be a full- or part-time student *in relation to the studies for which the student loan was made*? To resolve the ambiguity, courts have effectively read into subparagraph (i) one version or the other of those italicized words.

46. The purpose of section 178(1)(g) has been held to reflect the following policy choice by parliament reflecting the *BIA* and government student loans:

> 5. The broad purpose of the *Act* is to permit honest but unfortunate debtors to obtain a discharge from their obligations in order to facilitate a return to stable participation in social and economic life, while balancing this objective against the interests of creditors. Section 178(1)(g) reflects a policy decision which accords with this objective and recognizes that student loans involve a situation where funds are advanced when there is no existing capacity of the debtor to repay the debt, but education obtained will hopefully enable the debtor to begin active and fruitful participation in the economy at some later date. Realization of earning potential associated with education can take some period of time after leaving school, so Parliament saw fit to disallow the immediate discharge of student loans, in this case for two years after ceasing to be a student. This measure addressed the perceived abuse of students using the *Act* to obtain a discharge of student loans prior to making reasonable efforts to realize upon their earning potential achieved through education. [emphasis added][42]

47. Parliament could have achieved a calculation of the seven-year period by expressly starting the ceasing period with reference subparagraph (i) and (ii). By intentionally including the phrase "under the applicable Act or enactment" in subparagraph (i) and excluding it from subparagraph (ii) it leads to the assumption that the interpretation of subparagraph (ii) is not dependent on the definition of "full – or part time student" in the other student loan legislation. This is the result that

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[41] *Alberta Securities Commission v. Hennig*, 2021 ABCA 411 at para. 25, citing *Korea Data Systems (USA), Inc. v. Aamazing Technologies Inc.*, 2015 ONCA 465.
[42] *Minto, Re (Bankrupt)*, 1999 CanLII 13045 (SK KB) at para. 16.

the Newfoundland and Labrador Court of Appeal held in *Attorney General of Canada v. Collins*, 2013 NLCA 17 when interpretating s. 178(1)(g)(ii).[43] This was articulated in the following way:

> [13] During an additional course of studies, the debt from a prior loan is not extinguished, but merely deferred. Had Parliament intended to calculate the seven-year period taking the deferred time into account, by either re-setting the start date or exempting the deferral time from calculation of the seven years, section 178 could have been drafted to achieve that objective. However, the provision is silent as to events that occur after the debtor ceased to be a student with respect to the loan at issue. There is nothing in section 178 to indicate that Parliament was concerned with the nature of activities the student was undertaking during the referenced seven years, including additional studies.
>
> [14] To interpret section 178(1)(g)(ii) without regard to events occurring after the bankrupt ceased to be a student in relation to the particular loan is consistent with the purpose as well as the language of the Act. A helpful summary of the purpose of the Act, in the context of a student loan, is found in *Minto, Re* (1999), 1999 CanLII 13045 (SK KB), 14 C.B.R. (4th) 235 (Sask. Q.B.), at paragraph 16:
>
> …
>
> 5. The broad purpose of the *Act* is to permit honest but unfortunate debtors to obtain a discharge from their obligations in order to facilitate a return to stable participation in social and economic life, while balancing this objective against the interests of creditors. Section 178(1)(g) reflects a policy decision which accords with this objective and recognizes that student loans involve a situation where funds are advanced when there is no existing capacity of the debtor to repay the debt, but education obtained will hopefully enable the debtor to begin active and fruitful participation in the economy at some later date. Realization of earning potential associated with education can take some period of time after leaving school, so Parliament saw fit to disallow the immediate discharge of student loans, in this case for two years [now seven years] after ceasing to be a student. This measure addressed the perceived abuse of students using the *Act* to obtain a discharge of student loans prior to making reasonable efforts to realize upon their earning potential achieved through education.
>
> [15] I would add that, consistent with the above principles, the language of section 178(1) of the Act is properly construed narrowly because it operates "as an exception to the fresh start principle" which underlies the *Bankruptcy and Insolvency Act* (*Re: Hildebrand*, *supra*, at paragraph 34).

[43] *Attorney General of Canada v. Collins*, 2013 NLCA 17 at paras. 13-15.

48. The Appellant submits that this is the proper interpretation that this court should make when interpretating s. 178(1)(g). The purpose of the *BIA* requires a narrow interpretation on the exemptions to the *BIA* in section 178(1) while dually upholding the broad, remedial aims of student loan legislation.

49. The Appellant's position is that the proper interpretation does not require this Court to adopt the definition of "ceases to be a full or part time student" from the relevant federal or provincial student loan legislation. Respectfully, it appears to be an error to have the interpretation question substantially turn on whether "date" in that subparagraph was intended to be interpreted in the singular: the *Interpretation Act (Canada)* specifically provides that "[w]ords in the singular include the plural, and words in the plural include the singular."[44] However the purposes remains the same to provide effect to a narrow interpretation of this section, and that is accomplished to limiting the language to the loan in the singular.

50. The ordinary meaning of the word "cease" means to "to come to an end"[45] and also "to stop something".[46] The word ceased – or in the French to cease - in itself is not determinative. It must be tested against other indicators of legislative intention. Given the ambiguity that arises in the interpretation of this section, this court must look to other indicators of legislative intention, purpose and objectives in order to determine the proper scope of this section.

51. As will be seen, the relevant student loan regulations determine a student's status as a full- or part-time student from time to time, including when they obtain that status, when they cease to have that status and when and how they may be reinstated in that status for the purposes of the student loan legislation, but it is ambivalent when considering s. 178(1)(g) and its companion section 178(1.1).

52. Section 178(1)(g) has been interpreted such that, for all student borrowers who become subject to it through bankruptcy or a *BIA* proposal, their indebtedness is not released until seven years have passed since they in fact ceased to be a full- or part-time student.

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[44] S. 33(2), *Interpretation Act* (R.S.C., 1985, c. I-21).
[45] Oxford English Dictionary, sub verbo "ceased".
[46] Cambridge Dictionary, sub verbo "crease"

53. One consideration in the timing is linked to the "date of bankruptcy of the bankrupt" in s. 178(1)(g). This term is defined in s. 2 of the *BIA* as date of the bankruptcy, is "in respect of a person, means the date of

> (a) the granting of a bankruptcy order against the person,
>
> (b) the filing of an assignment in respect of the person, or
>
> (c) the event that causes an assignment by the person to be deemed; (date de la faillite)"[47]

54. While the filing of a proposal is not specifically referred to, s. 66.4(1) states that "All the provisions of this Act, except Division I of this Part, in so far as they are applicable, apply, with such modifications as the circumstances require, to consumer proposals." [48]

55. This was a previously undefined term until the *BIA* was amended on September 18, 2009. The "date of the initial bankruptcy event" also includes a proposal, it makes sense to use the date of the assignment into bankruptcy or the date of the filing of a consumer proposal as the starting point to consider the first of the timing requirements to interpret s. 178(1)(g).

56. It would create an absurd result that runs contrary to the policy objections of the *BIA* that debtors and student loan borrowers would only be available to benefit from releasing government student loans upon becoming bankrupt through either a bankruptcy or unsuccessfully making a Division I proposal to his or her creditors.

57. It would create a challenge that student loan borrowers – even if under a single date approach - would be required to make an assignment into bankruptcy over a proposal, even if a proposal were a better recovery for a creditor. In Nova Scotia, the courts have held that the consumer proposal provisions apply to student loan discharge eligibility and that government student loans that are over seven years old are discharged as a matter of law under s. 178(2).[49]

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[47] *BIA,* s. 2.
[48] *BIA*, s. 66.4(1).
[49] *Beaton (Re)*, 2023 NSSC 21 at para. 14 wherein Registrar Balmoukian ordered that the full performance of the consumer proposal discharged the student loan borrower's government student loans.

58. Given the remedial and policy objections of the *BIA*, such a result would lead to an absurdity and erode the reintegration of a student loan borrower back into commercial and professional life.

59. In terms of the timing alone, the special protections afforded to government student loans did not always exist as a seven years. This was succinctly described as:

> Prior to September 30, 1997, student loan debt was treated in the same way as the debtor's other debts and obligations. On September 30, 1997, the *BIA* was amended to make student loan debt non-dischargeable if a student filed for bankruptcy before ceasing full – or part-time studies or within two years after the student's studies ended. A student loan debtor was permitted to apply to the court two years after ceasing to be a student – a "hardship" application – to obtain a discharge of the student loan debt and the court could order a discharge if the student was able to demonstrate that he or she had acted in good faith and could not repay the loan due to financial difficulty. On June 18, 1998, the student loan non-dischargeable period, and the length of time the student had to wait before making a hardship application, were extended from 2 years to 10 years.
>
> …
>
> Paragraph 178(1)(g)(ii) of the *BIA* has been amended to reduce from 10 down to 7 years the period of time a student must wait after ceasing to be a student before a discharge order will release a debt or obligation in respect of a loan made under the *Canada Student Loan Act*, the *Canada Student Financial Assistance Act* or any enactment of a province that provides for loans or guarantees of loans to students.
>
> …
>
> This amendment came into force on July 7, 2008 and will apply in respect of a debtor who: (a) was bankrupt on July 7, 2008 and applies for his or her discharge on or after July 7, 2008 or; (b) becomes bankrupt on or after July 7, 2008. [emphasis added][50]

60. As can be seen, the timing issue of student loans was modified several times by Parliament from 2 years, to 10 years and finally 7 years period with parliament attempting to strike a proper

[50] *Hildebrand (Re)*, 2010 SKQB 321 at para. 14.

balancing of how long a student borrower should wait before these crown debts lose their unique protections.[51]

F. Hardship provisions governed by s. 178(1.1) of the BIA

61. Along with the discharge provisions, Parliament included s. 178(1.1) of the *BIA* which provides that a student borrower may be entitled to a release of their student loan debts after 5 years of when the student "ceases to be a full- or part-time student or an eligible apprentice, as the case may be, under the applicable Act or enactment..."[52] which is stated in full as:

Court may order non-application of subsection (1) **(1.1)** At any time after five years after the day on which a bankrupt who has a debt referred to in paragraph (1)(g) or (g.1) ceases to be a full- or part-time student or an eligible apprentice, as the case may be, under the applicable Act or enactment, the court may, on application, order that subsection (1) does not apply to the debt if the court is satisfied that • **(a)** the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt; and • **(b)** the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt.	**Ordonnance de non-application du paragraphe (1)** (1.1) Lorsque le failli qui a une dette visée aux alinéas (1)g) ou g.1) n'est plus un étudiant à temps plein ou à temps partiel ou un apprenti admissible, selon le cas, depuis au moins cinq ans au regard de la loi applicable, le tribunal peut, sur demande, ordonner que la dette soit soustraite à l'application du paragraphe (1) s'il est convaincu que le failli a agi de bonne foi relativement à ses obligations découlant de cette dette et qu'il a et continuera à avoir des difficultés financières telles qu'il ne pourra pas acquitter celle-ci.

62. This is become known as a student loan hardship application in which a student borrower may apply for an order that their government student loans are released along with the rest of their

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[51] A more comprehensive history of government student loans and bankruptcy is at pages 217 – 224 at Ben-Ishai, Stephanie. "Government Student Loans, Government Debts and Bankruptcy: A Comparative Study." Canadian Business Law Journal 44.2 (2006): 211-244.

[52] *BIA*, s.178(1.1).

debts under s. 178(2). In order to satisfy the court that they are entitled to relief, the student borrower must satisfy the presider of the tripartite statutory test in that:

a. the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt;

b. the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt.[53]

63. Beyond these statutory provisions, there is no guidance that the court must exercise when exercising its discretion on these applications. These application results in an all or nothing relief afforded to the court. The court may either grant or refuse the application, but has no discretion to modify the terms of the loan, or order that the loan is partially reduced.

64. The court may also retain discretion to refuse the application under s. 178(1.1) even if a student borrower meets the criteria of the statutory test. These hardship applications often provide procedural barriers for student borrowers to access the courts. For those experiencing true financial hardship may be unable to afford legal represetentation to make those applications to court. While a mechanism exists by which government student loans may be released at a later date regardless of the proper interpretation, it remains a challenge for student borrowers to access the courts due to the very nature of the test that requires a student borrower to establish current and future financial difficulties such that they are unable to pay their student loan.

G. Ceasing to be a "full or part time student" – Student Loan Legislation

65. It was no accident that the operation of s. 178(1)(g)(i) includes the words "ceases to be a full- or part-time student;"[54] for those words appear in the regulations made under the statutes referred to in that sub-paragraph. Even so, s. 178(1)(g)(ii) does not include that same reference. [55]

66. The *CSLA*, referred to in subsection 178(1), creates a complex scheme enabling eligible students to borrow money from private lenders on the basis of a government guarantee. The

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[53] *BIA*, s. 178(1.1)(a)(b).
[54] *BIA*, s. 178(1)(g)(i).
[55] *BIA*, s. 178(1)(g)(ii).

scheme contains many distinctions and exceptions which, for present purposes, are immaterial. The important features of the lending scheme for the purposes of *BIA* s. 178(1)(g) are two-fold:

a. what is or are the loan or loans creating the debt or obligation that is not released, and;

b. what is or are the date or dates pertinent to that disqualification.

67. Because of the conflict in the authorities interpreting s. 178(1)(g) as between single date and multiple date theory, these submissions will start with a discussion of the date or dates.

68. The starting point in that regard must be the relevant lending Act and attendant regulations. There are three questions to be answered:

- what is a full- or part-time student under the Act;
- what is meant by ceasing to be a full- or part-time student under the Act;
- what is the date or dates on which a particular borrower ceased to be a full- or part-time student under the Act.

69. In answer to the first question, the *CLSA Regulations* provide the following definition:

> ***2. (1) full-time student*** means a person
>
> - **(a)** who, during a confirmed period within a period of studies, is enrolled in courses that constitute
>
> - **(i)** at least 40 per cent and less than 60 per cent of a course load recognized by the specified educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or
>
> - **(ii)** at least 60 per cent of a course load recognized by the specified educational institution as constituting a full course load, in any other case,
>
> - **(b)** whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies in those courses, and
>
> - **(c)** who complies with the requirements of subsection 3(1); (étudiant à temps plein)
>
> ***part-time student*** means a person
>
> - **(a)** who, during a confirmed period within a period of studies, is enrolled in courses that constitute at least 20 per cent but less than 60 per cent of a course load

> recognized by the designated educational institution as constituting a full course load, and
>
> - **(b)** who meets the requirements of subsection 12(1), 12.1(1) or 12.2(1) or section 33, as the case may be; (*étudiant à temps partiel*).[56]

70. In summary, a full- or part-time student under the *CFSAA Regulations* is a person enrolled during a relevant period in the requisite number of courses.[57]

71. Students may pursue their studies in various ways. For example, in a four-year B.A. program in which a student attends the fall and winter semesters but takes the summer off to work. In the same program, the student may work straight through, including during the summers there would only be one date. Finally, if a student completes a degree and later enters graduate studies[58].

72. Thus there are thus many dates on which a student may in actual fact cease to be in full- or part-time studies under the *CFSAA*.

73. The regulations are tailored to allow the interest-free status of a student's loan(s) to continue from semester to semester as well as over the summer; to permit new borrowing from year to year; and to enable a student who takes a longer break from studies to be reinstated in full- or part-time studies and interest-free status. The key mechanisms used for those purposes are the determination of when at law the student ceases to be a full- or part-time student and when and how a student may be continued or reinstated as a full- or part-time student.

74. Section 4.1 *CSLA Regulations* determines when a person ceases at law to be a full- or part-time student:

> **4.1 (1)** Subject to paragraph 3(2)(b) [continuation or reinstatement of loan made while the borrower was a minor] and subsection 4(3) [pertaining to members of the Armed Forces], a borrower ceases to be a full-time student on the earliest of
>
> - **(a)** the last day of the last confirmed period,

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[56] *CSLA Regulations* at s. 2(1).
[57] *CFSAA Regulations* at s. 2(1).
[58] *CFSAA*.

- **(b)** the last day of the month in which the borrower no longer meets the applicable minimum percentage referred to in the definition "full-time student" in subsection 2(1), and
- **(c)** the day on which the borrower's interest-free period is terminated in accordance with subsection 9(4).[59]

"Confirmed period" is defined as follows:

> ***confirmed period*** means a period of studies, or part thereof, that is at least six consecutive weeks and that
>
> - **(a)** [immaterial],
> - **(b)** in the case of a confirmation of enrolment forming part of a certificate of eligibility issued under the Act, begins on the day on which that confirmation of enrolment is signed by the specified educational institution and ends on the last day of the last month of the period of studies indicated by the appropriate authority, [emphasis added] and
> - **(c)** in the case of a confirmation of enrolment not forming part of a certificate of eligibility, begins on the first day of the month indicated by, and ends on the last day of the month indicated by, the specified educational institution; [60]

75. Section 3 sets out the processes for continuation or reinstatement as a full- or part-time student as well as reinstatement of interest-free status. Subsection 3(1) sets out the preconditions for that to happen, mainly having to do with the payment of any interest that has accrued in the meantime. Subsection 3(2) is, for present purposes, the material provision:

- **(2)** Where the borrower referred to in subsection (1) meets the requirements set out in that subsection,
  - **(a)** the borrower again becomes a full-time student on the day on which the borrower meets those requirements, where paragraph (1)(d) or (e) applies in respect of the borrower; and
  - **(b)** the borrower continues to be a full-time student on and after the day following the day on which the borrower would otherwise have ceased to be a full-time student, in any other case.[61]

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[59] *CLSA Regulations,* s. 4.1(1)(a)(b)(c).
[60] *Ibid.* at s. 2.
[61] *Ibid.* at s. 3(2)(2)(a)(b).

76. Subsection (3) reinstates the payment and interest-free status of the pre-existing loan. [62]

77. In summary, while there may be one or more actual ceasing dates under the *CSLA* and regulations, the regulations defer the ceasing date, time by time, to allow students to continue their studies without their loan obligations becoming due.

78. A student who has left full-time studies in 2003 may or may not apply for reinstatement under the regulation as a full- or part-time student for a period of studies in 2008. The consequence of not applying for reinstatement is that the loan obligation will remain due and payments under the obligation or loan would be recommenced. However, interest-free status would not be restored in that case.

79. For the question of what is meant by a loan (or more precisely loan guarantee) under the *CSLA* in relation to which by the *BIA* s. 178(1)(g) the debt or obligation of a bankrupt borrower is not released. It is the Appellant's contention that the loan or obligation referred indicates the initial loan, rather than a single or definitive date tied to student status.

80. A student may, if they qualify, make a borrowing under the Act to finance their studies for one or more confirmed periods. If, for example, they are in a four-year B.A. program, they may borrow each year; or conceivable they may only borrow for, say, the first year. That would seem to suggest the possibility of multiple loans under the *BIA* s. 178(1)(g) and fit operationally with multiple ceasing dates.

81. That said, under s. 7 of the *Canada Student Loans Regulations*, which has the effect of requiring the consolidation of a series of borrowings into a single loan. Regulations s. 7 provides in material part as follows:

- **7 (1)** Subject to subsection (2), the borrower of a full-time guaranteed loan shall, before the first day of the seventh month after the month in which the borrower ceases to be a full-time student, enter into a consolidated guaranteed student loan agreement with the lender to which the borrower is indebted.
- **(2)** Where a borrower who has entered into a consolidated guaranteed student loan agreement again becomes a full-time student and the borrower's obligations are suspended in accordance with subsection 3(3), the borrower shall, whether or not

[62] *Ibid.* at s. 3(2)(3).

an additional full-time guaranteed loan is made to the borrower, before the first day of the seventh month after the month in which the borrower again ceases to be a full-time student, enter into a new consolidated guaranteed student loan agreement with the lender in place of the former consolidated guaranteed student loan agreement.

- **(3)** A consolidated guaranteed student loan agreement entered into in accordance with subsection (1) or (2) shall set out, in accordance with section 8, the principal amount of the loan and the period and frequency of the payments to be made to discharge that amount and the interest thereon calculated at the rate determined in accordance with sections 14 and 15 or sections 16.2 to 16.4, as the case may be.

- **(4)** Repayment provisions included in a consolidated guaranteed student loan agreement entered into in accordance with subsection (1) or (2) shall be consistent with the lender's standard practices in relation to unsecured consumer loans and shall take into account the borrower's capacity to pay instalments as they become due.[63]

82. In summary, the borrower who intends to continue as, or who wishes to be reinstated as a full- or part-time student under the Act is required by s. 7 of the *CLSA* regulations to enter into a consolidation agreement, whether or not there is further borrowing under the Act. It is submitted that this is relevant for the *CLSA* regulations but not for s. 178(1)(g).

83. If a person who has received student loans for prior periods, but does not wish or need to be reinstated as a full- or part-time student under the Act, that person meets the requirements of the regulation by having entered into a consolidation agreement for those prior loans and has no obligation to enter into a new consolidation.

84. Three things are noteworthy. First, the date of the requirement to enter into a consolidation agreement is designed to anticipate the date on which the borrower *finally* ceases to be a full-time student.

85. Second, the consolidation agreement functions from time to time to avoid prior borrowings becoming extinguished under the regulation's limitation provisions. Clearly the regulations intend to avoid student loan borrowings falling away, one by one, by the effluxion of time.

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[63] *CSLA Regulations* at s. 7.

86. Third, the consolidation agreement merges the borrower's obligations and the lender's rights into a single legally enforceable transaction. Among other things, that is the lender's claim provable in bankruptcy under section 121 of the *BIA.*

87. In the result, whether for purposes of repayment or interest obligations, for loan realizations, it becomes immaterial under the relevant student loan legislation that one or more prior borrowings have been made. Assuming there has been a consolidation agreement, the only *CSLA* loan before the court is the consolidated loan, as it creates a debt or obligations from which the bankrupt either is or is not to be released.[64]

88. Even if there is only one consolidated loan in relation to which the bankrupt has a debt or obligation, there may remain a number of actual ceasing dates. The consolidation does not, by itself, purport to change the actual ceasing date or dates.

89. So the question remains – what is the ceasing date or dates with respect to that consolidated loan for the purposes of s. 178(1)(g)? Here is the crucial point of argument and for interpretation—that s. 178(1)(g) requires an operating nexus between debt or obligation which is the subject of the loan that is not released and the ceasing date.

90. If after consolidation there is only one loan, then that is the loan or obligation which is actionable at law, and there is only one date on which it becomes actionable for the purposes of the student loan legislation. However, that is separate and apart from the *BIA* and s. 178(1)(g).

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[64] The *Canada Student Financial Assistance Regulation* takes a slightly different approach. It no longer requires a consolidation agreement every time a borrower has ceased to be a full-time student. However, in order for a borrower to again become a full-time student under the Act (i.e. for the purposes of borrowing more money), they must comply with a number of requirements, including to pay any interest that may be outstanding or enter into a consolidated risk-shared loan agreement or a consolidated guaranteed student loan agreement in which the unpaid accrued interest is added to the principal amount. Nevertheless, as a matter of practicality, consolidation agreements are commonly if not invariably entered into by the parties, either from time to time or at the end of a borrower's studies.

That interpretation of s. 178(1)(g) adheres to the objective of the student loan programs themselves, that borrowers be given payment and interest relief both during and for a period of time after ending their publicly-funded studies , whether continuous or interrupted, in order to have time to capitalize on their education; but that there must also come a time when they can reasonably be expected to start to repay.

91. A single date theory[65], as expressed in *Mallory*, potentially does harm to that policy by allowing mere re-enrolment to restart the time period for purposes of s. 178(1)(g), without regard for when public funding was received or how much time the bankrupt spent trying to capitalize on it.

92. In *Québec (Procureur général) c. N.P.*,[66] the Quebec Court of Appeal held that with respect to the single date theory:

> In summary, I believe that paragraph 178(1)(g) of the *BIA* refers to one single date when studies end. The clock is turned back to zero when a student goes back to school. In my opinion, this is the only interpretation that respects the legislator's intention to avoid opportunistic bankruptcies, to give the Minister the opportunity to recover loans granted under more than advantageous conditions, and finally, to ensure that the right to bankruptcy is reasonably exercised, after a period that gives the student time to build on his assets so acquired.

93. The multiple date theory which allows the total debt to be reduced borrowing by borrowing through the effluxion of time, would potentially disregard the intended effect of loan consolidation and the design logic of the student loan programs.

94. At the same time, it is submitted that the design of s. 178(1)(g) is a deliberate intention by parliament to exclude this definition from s. 178(1)(g)(ii) rather than adopt the definition or referentially incorporate the legislative definition found in the *Canada Student Loan Financial Assistance Act*, *Canada Student Loans Act*, or provincial loan regulations. It is here following the logic and reasoning in *Collins* that parliament could have expressly made it clear that it intended capture activities after the date of obtaining a government student loan – and parliament chose not to. Accordingly, the consolidation of earlier loans into a single agreement would have the effect

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[65] *Mallory* at para. 68.
[66] *Québec (Procureur général) c. N.P.*, 2011 QCCA 726 at para. 51.

of expanding more broadly what parliament had intended with respect to s. 178(1)(g) – which is a reasonable opportunity for a student borrower to capitalize on his or her education.

95. Instead, parliament chose to balance two completing interests: discouraging opportunistic debtors by ensuring that they waited at least seven years from the date of obtaining their student loans before it would be automatically discharged in a bankruptcy, and the fresh start principal. Parliament did not decide to define or limit the activities between the obtaining of a loan and the initial bankruptcy event. It could have done so by expressly legislating the definitions of the relevant student loan legislation into the language of s. 178(1)(g) in order to capture student status. Instead, parliament by leaving the language ambiguous signaled that the intention was that the obligations under s. 178(1)(g) operated from the date of the original loan obligation to the initial bankruptcy event.

96. In relation to the single date approach, in *Mallory*, the bankrupt had borrowed for further periods of education and had entered into a consolidation agreement.[67] Under a multiple date approach, Mr. Mallory would be entitled to have his earlier student loans extinguished, but his activities undertaken after his assignment into bankruptcy would not be included or have the effect of resetting the clock with respect to his later loans.

97. In *Goulding*,[68] by contrast, he was a student from 1995 to 1999 for which he received student loans, and again from 2003 to 2005 (for which he did not). Under the *Mallory* single date theory, the material ceasing date would have been in late 2005. On the interpretation of s. 178(1)(g) offered here, it would have been in late 1999—provided there was no restoration of status as a full- or part-time student, no instatement or interest-free status and no consolidation.

98. The argument that the consolidation of the loan agreement as a nexus for the purposes of s. 178(1)(g) does not appear to be contemplated by parliament, nor the sort of obligation intended by the nexus of the initial bankruptcy event and the "ceasing to be a part or full time student".

99. It is not known whether the materials facts in that regard were before the court in *Goulding*. Even so, the court's expressed concern in obiter about a variety of other possible fact situations

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[67] *Ibid.* at para. 23.
[68] *Goulding (Re)*, 2020 NSSC 22 at para. 4.

shows the need for sensitivity to the particular facts of any case and how the relevant laws and specifically the regulations are intended to apply to those facts.

100. In summary, s. 178(1)(g) must be viewed through the lens of the *BIA* and its objects, purpose and legislative aims which is to facilitate a financial fresh start. Had parliament intended to refer to student status when determining the ceasing date, it could have done so expressly and signal its intention by adopting various definitions of circumstances in relevant legislation to reset the clock or determine the time from which a student ceases to be a part or full time student. It did not and should weigh in favour of an interpretation favouring the multiple date approach and that the timing operates in relation to the date of the loan included under the relevant student loan legislation, rather than student status.

H. Reverse Onus Unduly placed on Bankrupt or Insolvent Debtor in section 178(1)

101. In the case on appeal, the courts below applied the *Mallory* single date test based on the date the Appellant's final set of studies ended, and not by reference to the date on which she last received government student loans for the 2004 study period. [69]

102. After the court's approval of her consumer proposal, the student loan authorities contended that the Appellant's student loan debt and obligations had not been released. [70]

103. The material provisions of the *BIA* are as follows:

> **On whom approval binding**
>
> **66.28 …**
>
> **(2)** Subject to subsection (2.1), a consumer proposal accepted, or deemed accepted, by the creditors and approved, or deemed approved, by the court is binding on creditors in respect of
>
> **(a)** all unsecured claims; and
>
> - **(b)** secured claims for which proofs of claim have been filed in the manner provided for in sections 124 to 134.

[69] *Piekut BCCA* at para. 22, *AR* at p. 10.
[70] *Piekut BCCA* at para. 26, *AR* at p. 10.

When consumer debtor is released from debt

(2.1) A consumer proposal accepted, or deemed accepted, by the creditors and approved, or deemed approved, by the court does not release the consumer debtor from any particular debt or liability referred to in subsection 178(1) unless the consumer proposal explicitly provides for the compromise of that debt or liability and the creditor in relation to that debt or liability voted for the acceptance of the consumer proposal.[71]

104. It is submitted that student loan authorities bore the onus of proof that subsection (2.1) applied to the Appellant's consumer proposal. This Court affirmed that the burden of proof in proceedings under s. 178(1)(e) is on the creditor seeking to avail itself of the exemption. This should remain the same for crown debts or debts under s. 178(1)(g) that the creditor is seeking to avail itself of being excluded from the *BIA's* scheme.[72]

105. The Appellant's position is that Canada was required to obtain a judicial determination before unilaterally asserting that their claim or liability survived her consumer proposal, which otherwise created a reverse onus on the Appellant to disprove that the debt presumptively fell into s. 178(1). The fact that the student loan authorities simply continued trying to collect on the debt, forcing the Appellant to seek a declaration, does not shift the onus at law.

106. The scheme, purpose and intention of the *BIA* warrants that creditor, including, including for the collection of student loan debts, which is crown debt, should be required to seek a determination from the court that it is a debt that survives a proposal or bankruptcy, especially when it is not a clear case that the government student loans may or may not survive a discharge or proposal.

107. To unduly shift the onus on student loan borrowers to establish in a court before a Registrar in Bankruptcy whether or not a student loan survives would create insurmountable procedural hurdle and access to justice. Often, student loan borrowers examining their options for relief from government student loans have financial difficult that would prevent them from seeking legal counsel to apply to court on their behalf or preparing their own materials to court. These are often individuals who are in or are contemplating insolvency proceedings.

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[71] *BIA*, s. 66.28.
[72] *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53 at para. 25.

Conclusion

108. The Appellant submits that the proper interpretation for s. 178(1(g) is that the multiple date approach, or that the ceasing refers to the date of the advance or disbursement of the loan, rather than student status is the proper interpretation to section 178(1)(g). There remain strong policy reasons for this interpretation given that student loan borrowers have no income or are low income, and seek to join the economy by bettering their situation by obtaining education financed through government funds. These aims are also linked to the purpose of the *BIA* to promote a financial fresh start.

109. Nothing in this Court's interpretation will also curtail or prevent the student loan authorities from filing a Notice of Intended Opposition to discharge or participating in a *BIA* proposal proceeding.

110. Once a student loan borrower has made an assignment into bankruptcy or a proposal, and if that loan is within 7 years, regardless of the multiple or single date approach, their remedy remains open to apply to court for an order under section 178(1.1) of the *BIA* that the debt be released[73]. This creates is own barriers as individuals who are experiencing true financial hardship have insurmountable procedural barriers that prevent them from reaching or bringing the matter to court.

111. Thus, the Appellant submits the proper approach to s. 178(1)(g) is that the "ceases to be a full or part-time student" that the multiple date approach and operated in relation to the disbursement or advancement of that particular loan. The deliberate choice by parliament to not referentially incorporate the definition of "Canada Student Loans Act, the Canada Student Financial Assistance Act or any enactment of a province that provides for loans or guarantees of loans into account" for the definition of ceasing signalled that parliament intended a different ceasing date would apply to s. 178(1)(g).

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[73] *Piekut BCCA* at para. 25, *AR* at p. 10.

112. Such an interpretation is harmonious with the scheme and purpose of the *BIA* to facilitate a financial fresh start while ensuring that student borrowers wait another period of time before their debts are released in bankruptcy or *BIA* proposal.

PARTS IV AND V - SUBMISSIONS CONCERNING COSTS AND ORDER(S) SOUGHT

113. The Appellant requests that:

a. The appeal be allowed;

b. The Appellant's application for a declaration that her government student loans are automatically discharged by virtue of section 178(2) of the *Bankruptcy and Insolvency Act* be granted.

114. The Appellant request costs not be awarded against her. In the event that the Appellant is successful, she requests costs.

PART VI – SUBMISSIONS ON CASE SENSITIVITY

115. There is no sealing or confidentiality order, publication ban, classification of information in the file that is confidential under legislation or restriction on public access to information in the file that could have an impact on the Court's reasons in the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of March, 2024.

Cody G. Reedman
Counsel for the Appellant, Izabela Piekut

PART VII - TABLE OF AUTHORITIES

JURISPRUDENCE	**Cited at paragraph(s)**
Alberta (Attorney General) v. Moloney, 2015 SCC 51	26
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