SCC File No.: 40782

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

B E T W E E N:

IZABELA PIEKUT

Appellant

– and –

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

Respondent

– and –

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUÉBEC, HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS REPRESENTED BY THE MINISTER OF FINANCE, CANADIAN ALLIANCE OF STUDENT ASSOCIATIONS AND CANADIAN ASSOCIATION OF INSOLVENCY AND RESTRUCTURING PROFESSIONALS

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PART I – OVERVIEW

1. In 2005, Parliament determined that the appropriate waiting period for student borrowers to discharge their governmental student loans in bankruptcy was 7 years. 2 years was too short. 10 years was unduly onerous and too long.

2. But, today, students are made to wait far longer from the date that they finish a degree until discharge. For example, in this case, Ms. Piekut finished her BA in 1994. Because she later returned to school for a bachelor of education and a master's, the approach adopted by the Court of Appeal means that she had to wait until 2016 until she could discharge her loans for her BA. Under this approach—known as the single date approach—she has to wait 22 years.

3. The case law shows that Ms. Piekut is not alone. An approach that regularly leads to discharge periods well beyond 7 years—indeed over 10 years—is inconsistent with Parliament's intent.

4. This case presents two interpretive approaches to section 178(1)(g)(ii) of the *Bankruptcy and Insolvency Act* ("**BIA**"). Under the first, the single date approach used below, the clock is reset each time a person goes back to school and a 7-year period starts anew. Under the second, the multiple date approach, the 7 years run from when the student completes the period of study relating to the relevant student loan.

5. On the modern approach to statutory interpretation, the multiple date approach is the correct way to interpret section 178(1)(g)(ii). To demonstrate this, CASA canvasses two tools of statutory interpretation. First, a full appreciation of the legislative history of section 178(1)(g)(ii) demonstrates that Parliament's intent was to strike a balance between rehabilitation and debt recovery. Only the multiple date approach is consistent with this intent. Second, the single date approach leads to absurd consequences that Parliament could not have intended—under some provincial loan regimes, merely going back to school triggers a longer wait to discharge.

PART II – POSITION ON THE QUESTION RAISED

6. The multiple date approach is the only correct way to interpret section 178(1)(g)(ii).

PART III – ARGUMENT

A. Legislative history: the single date approach ignores Parliament's balance

7. The legislative history of section 178(1)(g)(ii) shows Parliament's intentional decision to strike a balance between competing bankruptcy objectives.[1] Since 1997, Parliament has moved the non-dischargeability period for student loans under the BIA from zero to 2 years; from 2 to 10 years; and finally, from 10 to 7 years.

8. In these amendments, Parliament deliberately balanced, on the one hand, the need to protect the public purse from opportunistic bankruptcies and recover student loans with, on the other hand, the quintessential purposes of bankruptcy: rehabilitation by providing debtors with a "fresh start." Only the multiple date approach gives effect to this balance.

9. In contrast, the single date approach has no regard for this balance. First, it results in unduly onerous non-dischargeability periods far in excess of Parliament's choice of 7 years. Second, it discourages further education by penalizing going back to school. Third, it makes the hardship provisions in section 178(1.1)—a critical "safety valve"—ineffective.

(i) Legislative history illustrates Parliament's intent to strike a balance

10. Legislative history is an important tool for understanding the "entire context" of legislation.[2] The history of section 178(1)(g)(ii) underlines that Parliament intended to strike a careful balance. Parliament intended to prevent opportunistic bankruptcies while providing students with a fair opportunity for a fresh start. Indeed, Parliament's repeated amendments to section 178(1)(g)(ii) illustrate its continuing pursuit of balance.

11. Before 1997, student loans were treated the same in bankruptcy as any other consumer debt—they were generally released when the debtor was discharged from bankruptcy.[3]

12. This changed in 1997. Bill C-5 added section 178(1)(g)(ii), which established a 2-year

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[1] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, s. 178(1)(g)(ii).

[2] *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, para. 60.

[3] Stephanie Ben-Ishai, "Student Loans and Bankruptcy: Five Years Later" in Janis P. Sarra, ed., *Annual Review of Insolvency Law 2014* (Toronto: Carswell, 2014), p. 224, s. 1 (Westlaw).

non-dischargeability period for student debt.[4] At second reading of the Bill, MPs expressed concern that the Bill would discourage education.[5] In response, the Parliamentary Secretary to the Minister of Industry pointed to the need for "bankruptcy laws that provide certainty and fairness to both debtors and creditors,"[6] and explained how Bill C-5 incorporated an inherent balance between those interests:

> Students who have received financial assistance from taxpayers owe it to society and to future generations of students to reimburse the loans they have received.
>
> At the same time, however, governments and bankruptcy laws have to recognize that some students may find themselves in a hardship situation. This is reflected in the legislation by limiting the period during which student loan debt would be non-dischargeable.[7]

13. In 1998, Parliament increased the non-dischargeability period for student loans from 2 years to 10 years.[8] The next year, the government began extensive public consultations, including on the treatment of student loans in bankruptcy.

14. The Standing Senate Committee on Banking, Trade and Commerce heard from a variety of stakeholders. In its 2003 report (the "**2003 Senate Report**"), it concluded that the 10-year period was "unduly onerous" and that "judges must have the discretion to act in cases of exceptional circumstances," such as when students are experiencing "undue hardship."[9]

15. Parliament then introduced Bill C-55 in 2005 to reduce the non-dischargeability period from 10 years to its current 7 years.[10] Parliamentary debates emphasized Parliament's intent to

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[4] *An Act to Amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, and the Income Tax Act*, S.C. 1997, c. 12 [Bill C-5], s. 105(2), p. 63.

[5] See e.g., Canada, House of Commons, *Official Report of Debates (Hansard)*, 35th Parl., 2nd Sess., No. 085, vol. 134 (10 October 1996), T1240, p. 5353 (Mr. Stéphan Tremblay).

[6] Canada, House of Commons, *Official Report of Debates (Hansard)*, 35th Parl., 2nd Sess., No. 050, vol. 134 (27 May 1996), T1710, p. 3030 (Mr. Morris Bodnar).

[7] Canada, House of Commons, *Official Report of Debates (Hansard)*, 35th Parl., 2nd Sess., No. 050, vol. 134 (27 May 1996), T1720, p. 3032 (Mr. Morris Bodnar) [emphasis added].

[8] *Budget Implementation Act, 1998*, S.C. 1998, c. 21, s. 103(1) (Westlaw).

[9] Standing Senate Committee on Banking, Trade and Commerce, *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (Ottawa: Senate, November 2003), [2003 Senate Report], p. 55.

[10] *An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and*

make the insolvency system "fairer" for debtors while "reduc[ing] the scope for abuse"—an effort to balance BIA objectives.[11] A summary of key excerpts from those debates can be found at **Tab A** of CASA's Book of Authorities.

16. In the second reading of Bill C-55, the Hon. Jerry Pickard, Parliamentary Secretary to the Minister of Industry, described the overall goal of C-55 as balancing the insolvency objectives of allowing debtors to "obtain a fresh start and thereby have the best possible chance to restore their financial situation" and ensuring the system "functions effectively and efficiently and provides the right incentives so that it deters potential abuses."[12] The Parliamentary Secretary recognized the need to help students "who find it difficult after they have graduated, for whatever reason," either because "they could not get a job in the field for which they had been trained" or "circumstances in their lives made it impossible for them to make the money to pay back the loans."[13] Nowhere in these debates did Parliament discuss the respondent's concern that students might continue their studies indefinitely, thereby resulting in the loan being discharged before it became payable.[14]

17. Parliament's response to student hardship was to lower the maximum period that a student was required to wait before they could discharge their student loans in bankruptcy:

> What we as a government are looking at very carefully is where that maximum is: the number of years that a student has tried to pay back the loan and the ability of that student to pay back the loan. All the information comes together to give the direction that the student cannot afford to pay the loan back. There is a seven year time period in which we are going to allow the student to file bankruptcy at an earlier stage in order to dispense that debt.[15]

Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts, S.C. 2005, c. 47 [Bill C-55], s. 107(2).

[11] Canada, House of Commons, *Official Report of Debates (Hansard)*, 38th Parl., 1st Sess., No. 128, vol. 140 (29 September 2005), T1145, p. 8199 (Hon. Jerry Pickard).

[12] Canada, House of Commons, *Official Report of Debates (Hansard)*, 38th Parl., 1st Sess., No. 128, vol. 140 (29 September 2005), T1150, p. 8200 (Hon. Jerry Pickard).

[13] Canada, House of Commons, *Official Report of Debates (Hansard)*, 38th Parl., 1st Sess., No. 128, vol. 140 (29 September 2005), T1200, p. 8202 (Hon. Jerry Pickard).

[14] Factum of the Respondent dated May 6, 2024, para. 115.

[15] Canada, House of Commons, *Official Report of Debates (Hansard)*, 38th Parl., 1st Sess., No. 128, vol. 140 (29 September 2005), T1200, p. 8202 (Hon. Jerry Pickard) [emphasis added].

(ii) The single date approach forces students to wait far longer than the maximum period of 7 years

18. Through years of debate and amendment, Parliament determined that its various objectives were only balanced by making students wait 7 years for discharge. 2 years was too short. 10 years was too long, because it was unduly onerous for students.

19. The single date approach is inconsistent with this carefully constructed balance. It regularly results in wait times for dischargeability that far exceed 7 years. For example, in *Québec v N.P.*, there were 10 years between the end of two periods of study; under the single date approach, the non-dischargeability period of the bankrupt's student loan was 17 years.[16] In this case, there was a 15-year gap between Ms. Piekut's first and final periods of study.[17] The single date approach would impose on her a 22-year non-dischargeability period for her first student loan. If a 10-year wait was considered unduly onerous, 22 years is undoubtedly excessive.

20. The single date approach has no outer limit; the required wait for discharge can be postponed indefinitely as long as a student with an outstanding loan goes back to school as a full- or part-time student. The single date approach has no constraints because it interprets section 178(1)(g) exclusively on the basis of creditor repayment and preventing opportunistic bankruptcies and ignores the fresh start principle.

21. Indeed, the single date case law improperly, and often expressly, ousts the fresh start objective. In *Québec v. N.P.*, the Québec Court of Appeal expressly held that "the social and economic rehabilitation of the insolvent person […] is of no use in resolving the issue," holding that the lower court erred in adopting an interpretation in accordance with that objective.[18] Likewise, in *Mallory (Re)*, the Supreme Court of British Columbia "fail[ed] to see how the length of time between periods of study is of any consequence."[19] In this case on appeal, the Court of Appeal focused on section 178(1)(g)(ii)'s role in preventing opportunistic bankruptcies

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[16] *Québec (Procureur général) c. N.P.*, 2011 QCCA 726, paras. 19, 21 [*Québec v N.P.*].

[17] *Piekut v. Canada (Minister of National Revenue)*, 2023 BCCA 181, paras. 5-9.

[18] *Québec (Procureur général) c. N.P.*, 2011 QCCA 726, para. 37 (translated in part from French) [emphasis added].

[19] *Mallory (Re)*, 2015 BCSC 5, para. 82.

without due consideration for the need to give Ms. Piekut a fresh start.[20]

22. The respondent points to various interest relief, debt forgiveness and other accommodations available to students, implying that a debtor's fresh start could be achieved through alternative measures. While such measures are valuable tools for student borrowers, the legislative history shows that they were not intended to substitute for the fresh start principle. The 2003 Senate Report concluded that while interest and debt relief programs assist students, they "are not a replacement for bankruptcy as a method of providing a 'fresh start'"—it supported "the range of federal initiatives" but nonetheless found the 10-year waiting period to be too long.[21] Debt and interest relief could not justify a 10-year waiting period; 7 years was needed to provide a potential fresh start. Nothing in the legislative history supports using interest or debt relief as a justification for the single date approach's indefinite timelines to discharge.

23. Finally, the respondent notes in its factum that the CSLA and CSFAA require students to enter into consolidation agreements each time they return to school, and that the single date approach better reflects this reality by treating the dischargeability of all student loans as if they were a single loan.[22] But again, there is nothing in the legislative history that makes the ease of administering the regime to the government a valid reason for delaying discharge. Untangling which portion of a loan relates to which period of studies would not be unusual—trustees regularly estimate complex claims under the BIA.[23] In any event, the complexity of determining the quantum of a claim is no justification for continuing to burden a student with a debt that is 20 years old, particularly where students did not fund their latest studies with student loans.

(iii) The single date approach undermines Parliament's intent by discouraging education and skills retraining

24. The single date approach punishes Canadians for pursuing further education and skills retraining. Under the multiple date approach, if a Canadian decides to return to school to retrain or improve her skills, the ultimate date of dischargeability of her student loans is unaffected.

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[20] *Piekut v. Canada (Minister of National Revenue)*, 2023 BCCA 181, para. 21.

[21] 2003 Senate Report, pp. 51, 55.

[22] Factum of the Respondent dated May 6, 2024, paras. 55, 67, 87.

[23] See, e.g., *In the Matter of the Proposal to Creditors of Conforti Holdings Limited*, 2022 ONSC 3264, paras. 47-49.

Under the single date approach, becoming a full- or part-time student restarts the 7-year clock.

25. This disincentive to education is contrary to Parliament's intent. It is inconsistent with allowing workers a fresh start. It also potentially discourages workers from gaining new skills to allow them to repay their student loans. It "would frustrate one of the very themes of the *BIA* – debtor rehabilitation; and the prime objective of public student loans and other tax and policy incentives – to foster an educated and productive society."[24]

26. Many of the section 178(1)(g) cases discuss post-secondary education as synonymous with university, particularly professional schools. This is too narrow. Section 178(1)(g) applies to full- and part-time students at universities, colleges and vocational schools alike.[25] It captures full- and part-time students who retrain and/or upgrade their skills, whether for 4 years or 1.

27. Retraining provides critical opportunities. A worker who loses her job due to technological change or shifting consumer spending patterns, for example, often has no other option but to realign her skillset and change careers. A barrier to retraining is therefore a barrier to that worker getting back on her feet. For creditors, it is also a barrier to that worker finding a new stream of income to satisfy her debts—student loans or otherwise.

28. The single date approach erects such a barrier. It discourages former students from being nimble following a job disruption by postponing the dischargeability of existing debts upon their return to school. It also works an incongruity in the scheme of section 178(1). Under the single date approach, a worker who retrained by becoming a full- or part-time student at a college would restart the 7-year clock of an earlier student loan under section 178(1)(g)(ii). But a worker who decided to retrain by becoming an "eligible apprentice" would not restart the 7-year clock of an earlier student loan under section 178(1)(g.1). There is no reason to believe Parliament would

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[24] *Goulding (Re)*, 2020 NSSC 22, para. 20. See also, 2003 Senate Report, p. 55.

[25] For example, the *Canada Student Financial Assistance Regulations*, SOR/95-329, s. 2(1), defines "full-time student" with reference to "designated educational institution[s]." The list of designated educational institutions includes universities, colleges, trade schools, vocational training schools and similar institutions: Government of Canada, "List of designated educational institutions" (last modified 16 July 2021).

discriminate in this fashion.

29. It is "perverse to think" that Parliament intended to deter retraining: "Improving, refreshing, or perhaps even reinventing one's skills and knowledge is an underpinning to financial success, independence, and societal productivity—core values to the *BIA*."[26]

(iv) The single date approach undermines section 178(1.1) for undue hardship

30. Section 178(1.1) provides for a hardship exception to the 7-year waiting period.[27] It reduces the waiting period for the discharge of student loan debt to, at minimum, 5 years, if the debtor shows good faith and financial difficulty. The 2003 Senate Report recommended expedited discharge in such cases of "undue hardship" after hearing from stakeholders about the burdens of student debt.[28]

31. Under the single date approach, the respondent submits that the timelines in 178(1)(g) and (1.1) work harmoniously and are measured from the same time.[29] The hardship exception would only be available 15 or 20 years after a student's first degree ends. In this case, the single date approach would result in Ms. Piekut gaining access to relief under section 178(1.1) only after 20 years had passed since concluding the education for which she had borrowed.

32. This interpretation turns section 178(1.1) on its head. Parliament designed 178(1.1) to provide more expeditious discretionary relief in cases of undue hardship. Under the single date approach this relief may be postponed indefinitely. For example, 5 years after finishing a degree, if a former student loses her job and faces financial difficulty, a bankruptcy can discharge her student debt. But if instead, she retrains—becoming a full-time student at a local college—and that retraining does not work, she must wait 5 more years. This cannot be Parliament's intent.

(v) Opportunistic bankruptcies are better prevented under the multiple date approach

33. As noted, one of Parliament's objectives in its 7-year balance was the prevention of

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[26] *Goulding (Re)*, 2020 NSSC 22, para. 21.
[27] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 178(1.1).
[28] 2003 Senate Report, p. 56.
[29] Factum of the Respondent dated May 6, 2024, para. 100.

opportunistic bankruptcies.[30] While the single date approach advances this objective, it does so with an overbroad solution: it prevents honest and dishonest debtors alike from having their student loans discharged. This result is unnecessary. Section 172 of the BIA gives courts the discretion to refuse to grant a student debtor an absolute discharge in circumstances of abuse.[31] It also gives the Crown a forum to contest a borrower's discharge. Opportunistic bankruptcies are properly addressed under this provision without undermining Parliament's balance.

B. The single date approach works absurd consequences in certain provinces

34. The appellant and respondent disagree on whether, under section 178(1)(g)(ii), the definitions of full-time and part-time students are defined by federal and provincial student loan legislation. CASA takes no position on this issue. However, under either interpretation, the single date approach leads to absurd consequences; it should be rejected.

35. It is a principle of statutory interpretation that courts should avoid interpreting a statute in a manner that leads to absurd consequences. This principle stems from the search for legislative intent: it is presumed that legislatures do not intend to produce an absurdity.[32]

36. The absurdity in the single date approach lies in the automatic extension of the waiting period to discharge loans merely because a borrower has the audacity to receive more education. As discussed above, this result is not restricted to students registered in professional or graduate degrees; it covers college and vocational training too. Going back to school or taking a few classes, even with a borrower's own funds, is punished. That consequence is ridiculous.

37. The respondent rejects the absurdity, arguing that there is a rational connection between returning to school and postponing bankruptcy relief, because under the federal student loan scheme, a borrower who returns to school must choose to opt in to becoming a full- or part-time

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[30] Canada, House of Commons, *Official Report of Debates (Hansard)*, 38th Parl., 1st Sess., No. 128, vol. 140 (29 September 2005), T1150, p. 8200 (Hon. Jerry Pickard).

[31] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 172.

[32] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, para. 27. See also Ruth Sullivan, *The Construction of Statutes*, 7th ed. (Markham, Ont.: LexisNexis Canada, 2022), §10.01:3 (Lexis+ Canada).

student. They must, among other things, obtain a signed confirmation of enrollment.[33] But this view is too narrow. The BIA also applies to provincial student loan regimes. It must be interpreted in the context of both the federal and provincial schemes it applies to.

38. For example, the student loan regimes in Alberta and Québec define (i) "student" and (ii) "full-time student" and "part-time student" only with respect to enrollment. Merely attending an institution is enough; a borrower who returns for subsequent education is automatically considered a full- or part-time student, with no additional steps like a signed confirmation of enrollment.[34] The Québec Court of Appeal, in *Québec v N.P.*, [35] accepted that the only requirement to qualify under the Québec legislation was to be a "person who pursues studies in vocational training at the secondary level or studies at the postsecondary level."[36] A summary of the definitions of "student," "full-time student," and "part-time student" in each Canadian jurisdiction is provided at **Tab B** to CASA's Book of Authorities.

39. These broad definitions appear to capture post-secondary studies of virtually any nature, including, for example, courses on artificial intelligence; business administration; or culinary arts; or training for new occupational certifications. Under the single date approach, an Albertan or Québecer who borrowed provincially for a degree and then, a decade later returns to school to switch careers, retrain or merely to enrich their life, automatically has to wait another 7 years to get bankruptcy relief. There is no logical connection to the statutory purposes of the BIA for such a harsh consequence from merely going back to school.

40. Interpreting the federal bankruptcy regime under the single date approach creates absurd consequences. It should be rejected.

PART IV – SUBMISSIONS CONCERNING COSTS

41. CASA will not seek costs and asks that no costs be awarded against it.

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[33] Factum of the Respondent dated May 6, 2024, para. 57; *Canada Student Financial Assistance Regulations*, SOR/95-329, s. 2(1).

[34] See e.g., *Student Financial Assistance Regulation*, Alta. Reg. 298/2002, Sched. 2, ss. 1(1)(h), (m) and (q).

[35] *Québec (Procureur général) c. N.P.*, 2011 QCCA 726, paras. 13 and 33.

[36] *Act respecting financial assistance for education expenses*, C.Q.L.R. c. A-13.3, s. 2.

June 10, 2024

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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PART VII – TABLE OF AUTHORITIES

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