

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

Between:

Izabela Piekut

Appellant
(Appellant)

and

His Majesty the King in Right of Canada
as represented by the Minister of National Revenue

Respondent
(Respondent)

and

Attorney General of Ontario; Attorney General of Quebec; 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

Interveners

FACTUM OF THE INTERVENER, HIS MAJESTY THE KING
IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
AS REPRESENTED BY THE MINISTER OF FINANCE
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

MINISTRY OF ATTORNEY GENERAL

Legal Services Branch
1001 Douglas Street
Victoria BC V8W 2C5

Fernando de Lima

Tel: 250.356.8877

Fernando.deLima@gov.bc.ca

Counsel for the Intervener, His Majesty the King
in right of the Province of British Columbia, as
represented by the Minister of Finance

MICHAEL J SOBKIN

331 Somerset Street West
Ottawa ON K2P 0J8
Tel: 613.282.1712

MSobkin@sympatico.ca

Agent for Counsel for the Intervener, His
Majesty the King in right of the Province
of British Columbia, as represented by the
Minister of Finance

ORIGINAL TO: THE REGISTRAR

COPIES TO:

Reedman Law
Cody G. Reedman
#800a – 1030 West Georgie Street
Vancouver, BC V6E 2Y3
Phone: 604.570.0005
Fax: 604.688.1619
CReedman@reedmanlaw.com

Counsel for the Appellant

Supreme Advocacy LLP
Marie-France Major
340 Gilmour Street, Suite 100
Ottawa, ON K2P 0R3
Phone: 613.695.8855 ext 102
Fax: 613.695.8580
mfmajor@supremeadvocacy.ca

Agent for Counsel for the Appellant

Attorney General of Canada
Michael Taylor and Christa Akey
Department of Justice
900 – 840 Howe Street
Vancouver BC V6Z 2S9
Phone: 604.666.2061
Fax: 604.666.2214
Michael.Taylor@justice.gc.ca
Christa.Akey@justice.gc.ca

Counsel for the Respondent

Attorney General Of Canada
Christopher M Rupar
Department of Justice
50 O'Connor Street, Suite 500, Room 556
Ottawa, ON K2P 6L2
Phone: 613.941.2351
Fax: 613.954.1920
Christopher.Rupar@justice.gc.ca

Agent for Counsel for the Respondent

Attorney General for Ontario

Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, Ontario M7A 2S9

Shahana Kar | Kristin Yeretsian

Tel: 416.571.2100 | 647.244.1268

Fax: 416.326.4015

Email: shahana.kar@ontario.ca

Kristina.yeretsian@ontario.ca

**Counsel for the Intervener,
Attorney General for Ontario**

Lavoie-Rousseau, Justice-Québec

Direction du contentieux Québec
300 boul. Jean-Lesage, bureau 1.03
Québec, Québec G1K 8KG

Janie Desautels and Audrey-Anne Blais

Tel: 418.649.3524

Fax: 418.646.1656

Email: janie.desautels@justice.gouv.qc.ca

Audrey-anne.blais@justice.gouv.qc.ca

Lavoie-rousseau@justice.gouv.qc.ca

**Counsel for the Intervener,
Attorney General of Québec**

Torys LLP

79 Wellington St. W., Suite 3000
Box 270, TD South Tower
Toronto, Ontario M5K 1N2

Jeremy Opolsky | Mike Noel

Tel: 416.865.8117 | 416.865.7378

Email: JOpolsky@torys.com

MNoel@torys.com

Nanda & Company

10007 80 Avenue NW
Edmonton, Alberta T6E 1T4

Borden Ladner Gervais LLP

World Exchange Plaza
1300-100 Queen Street
Ottawa, Ontario K1P 1J9

Nadi Effendi

Tel: 613.787.3562

Fax: 613.230.8842

Email: neffendi@blg.ca

**Agent for Counsel for the Intervener,
Attorney General for Ontario**

Noël & Associés

111, rue Champlain
Gatineau, Québec J8X 3R1

Pierre Landry

Tel: 819.771.7393

Fax: 819.771.5397

Email: p.landry@noelassociés.com

**Agent for Counsel for the Intervener,
Attorney General of Québec**

Anna Lund

Tel: 780.400.1253

Email: AJLund@ualberta.ca

**Counsel for the Intervener,
Canadian Alliance of Student Associations**

Gowling WLG (Canada) LLP

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

C Haddon Murray | Heather Fisher | James Aston

Tel: 416.863.3604 | 416.369.7202 | 416.369.6659

Fax: 416. 862.7661

Email: haddon.murray@gowlingwlg.com

heather.fisher@gowling.wlg.com

james.aston@gowlingwlg.com

**Counsel for the Intervener, Canadian Association of
Insolvency and Restructuring Professionals**

TABLE OF CONTENTS

Part I: Overview and Statement of Facts	1
Overview	1
Facts	2
Part II: Position on the Questions in Issue.....	3
Part III: Statement of Argument	4
The terms of student loan programs provide context supporting the last date approach.....	4
<i>Eligibility is based on financial need, not commercial lending criteria</i>	<i>5</i>
<i>Student status is defined in the applicable legislation or policies under that legislation</i>	<i>6</i>
<i>Student status is important because it affects repayment and interest obligations</i>	<i>7</i>
The French version of subsection 178 (1.1) also supports the last date approach.....	8
Conclusion.....	10
Part IV: Submissions Concerning Costs	10
Part V: Order Sought.....	10
Part VII: Table of Authorities	11

PART I: OVERVIEW AND STATEMENT OF FACTS

Overview

1. The central issue in this appeal is the interpretation of paragraph 178(1)(g) of the *Bankruptcy and Insolvency Act* (the “BIA”).¹ Paragraph 178(1)(g) provides that federal, provincial, and territorial government student loans survive a bankruptcy or consumer proposal if the bankruptcy or consumer proposal occurs within seven years after the borrower “ceased to be a full- or part-time student”.
2. When does a borrower cease to be a student? His Majesty the King in right of the Province of British Columbia, as represented by the Minister of Finance (“British Columbia”) says the relevant date is when the borrower last had student status under the applicable student loan legislation, regardless of when the borrower last received student loan funding, and regardless of any break in studies or completion of a program of studies.
3. There are two competing approaches to interpreting paragraph 178(1)(g), described by Justice Gaul of the British Columbia Supreme Court as the “last date approach” and the “multiple date approach”.² The last date approach, adopted by the British Columbia Court of Appeal in this case and the Quebec Court of Appeal in *N.P.*,³ holds that the relevant date is the end of the borrower’s most recent study period. The multiple date approach, adopted by the Newfoundland and Labrador Court of Appeal in *Collins* and by judges and registrars in some other provinces in cases such as *St. Dennis* and *Goulding*, holds that the relevant date may be the end of an earlier study period funded by a student loan.⁴
4. The British Columbia Court of Appeal correctly adopted the last date approach. This Court should adopt the same interpretation and should not endorse the multiple date approach. The text, context, and purpose of the relevant statutory provisions support the last date approach,

¹ RSC 1985, c B-3 [‘BIA’].

² *Mallory (Re)*, 2015 BCSC 5 [‘Mallory’] at para 37.

³ *Québec (Procureur général) c. N.P.*, 2011 QCCA 726 [‘N.P.’].

⁴ *Attorney General of Canada v. Collins*, 2013 NLCA 17; *St. Dennis (Re)*, 2017 ONSC 2417; *Goulding (Re)*, 2020 NSSC 22.

not the multiple date approach. The multiple date approach disregards the proper approach to statutory interpretation endorsed by this Court in *Bell ExpressVu*.⁵

5. British Columbia agrees with the respondent's submissions regarding the standard of review and principles of statutory interpretation and the respondent's analysis with respect to the text, context, and purpose of the provision at issue. British Columbia's factum will focus on two aspects of the relevant context that are not addressed, or are addressed only briefly, in the respondent's factum.

6. First, key features of provincial and territorial student loan programs are an important part of the relevant context. Government student loans, unlike commercial loans, are issued based on need. "Full-time student" is defined in each jurisdiction's student loan legislation or in policies established under that legislation. Student status affects not only eligibility for new student loan funding but also repayment and interest obligations for existing student loan debts: in general, when a borrower qualifies as a full-time student, no payments are required, and interest does not accrue. In this context, focusing on anything other than student status would be contrary to the purpose of paragraph 178(1)(g), which is to discourage opportunistic bankruptcies by recent graduates who have not had sufficient time to capitalise on their education.

7. Second, the clear language of the French version of subsection 178(1.1) resolves any doubt about the meaning of the verb "to cease" used in the English versions of paragraph 178(1)(g) and subsection 178(1.1). The words "n'est plus un étudiant ... depuis au moins cinq ans" in the French version of subsection 178(1.1) make it clear the borrower cannot have student status during the period in question.

8. This Court should affirm that the date a student loan borrower ceases to be a student for the purposes of section 178 of the BIA is the end of the most recent study period.

Facts

9. The key facts, which British Columbia understands not to be in dispute, are as follows:

- (a) The appellant filed a consumer proposal in October 2013.⁶

⁵ *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 [*Bell ExpressVu*].

⁶ Court of Appeal Reasons for Judgment ("**BCCA Reasons**"), para 9, Appellant's Record ("**AR**") Tab 3, p 9.

- (b) The appellant was a full-time student (meaning she was enrolled in at least 60% of a full course load) when she attended the University of British Columbia (“UBC”) from 2007 to 2009.⁷
- (c) The appellant did not receive student loan funding during her studies at UBC from 2007 to 2009.⁸
- (d) The appellant submitted confirmations of enrolment for her studies at UBC from 2007 to 2009 and, as a result, she did not have to make payments and did not incur interest charges on her existing student loans during these studies.⁹
- (e) The appellant last received student loan funding for studies at UBC from 2002 to 2003 and previously received student loan funding for studies at the University of Calgary.¹⁰
- (f) The appellant received federal student loan funding from the respondent and provincial student loan funding from Alberta. She did not receive student loan funding from British Columbia.¹¹

10. If there is any dispute as to the facts, British Columbia takes no position on any disputed facts.

PART II: POSITION ON THE QUESTIONS IN ISSUE

11. British Columbia does not agree with the appellant’s articulation of the issues. British Columbia agrees with the respondent that the sole issue is whether the Court of Appeal correctly

⁷ Affidavit of Josée Grondin (“**Grondin Affidavit**”), paras 14–16 and Exhibit “E”, AR Tab 14, pp 159 and 202–207. The appellant did not challenge this evidence in the courts below; her description of her studies as “part-time” (Affidavit of Izabela Piekut (“**Piekut Affidavit**”), para 11, AR Tab 11, p 52) and the Court of Appeal’s corresponding description (BCCA Reasons, *supra* note 6, para 8, AR Tab 3, p 9) appear to use the term “part-time” in its colloquial sense, meaning less than 100% of a full course load.

⁸ BCCA Reasons, *supra* note 6, para 8, AR Tab 3, p 9.

⁹ Grondin Affidavit, *supra* note 7, paras 14–17 and Exhibit “E”, AR Tab 14, pp 159 and 202–207.

¹⁰ BCCA Reasons, *supra* note 6, paras 5 and 7, AR Tab 3, p 8.

¹¹ *Ibid*; Piekut Affidavit, *supra* note 7, Exhibit “C”, AR Tab 11, p 62.

interpreted “the date on which the bankrupt ceased to be a full- or part-time student” in paragraph 178(1)(g) of the BIA.

12. British Columbia says the Court of Appeal’s interpretation is correct: the date a student loan borrower ceased to be a student is the end of the most recent study period in which the borrower had student status, regardless of whether additional student loan funding was provided for that study period.

13. With respect to the new issue raised in the appellant’s factum, arguing that creditors are required to obtain a judicial determination before asserting that a debt survives a consumer proposal under paragraph 178(1)(g) of the BIA, British Columbia agrees with the respondent that this issue should not be addressed for the first time in the context of this appeal.

PART III: STATEMENT OF ARGUMENT

14. The text, context, and purpose of paragraph 178(1)(g) of the BIA all support the Court of Appeal’s interpretation. The submissions below focus on two important contextual considerations: first, relevant terms of provincial and territorial student loan programs; and, second, the French version of the closely-related subsection 178(1.1) of the BIA.

The terms of student loan programs provide context supporting the last date approach

15. Government student loan programs are broadly similar throughout Canada. The terms of these programs – including financial need as an eligibility criterion, the defined term “full-time student”, and the effect of student status on repayment and interest obligations – are an important part of the context in which paragraph 178(1)(g) must be interpreted.

16. Most provincial and territorial governments have student loan programs for post-secondary students. In most jurisdictions, the provincial or territorial government works with the federal government to deliver student loans. Students apply to the provincial or territorial government for student loan funding, including federal student loan funding where applicable.¹²

17. Alberta, Manitoba, Nova Scotia, and Prince Edward Island provide separate provincial student loans in addition to working with the federal government to deliver federal student loan funding. British Columbia, Saskatchewan, Ontario, New Brunswick, and Newfoundland and

¹² Affidavit #1 of Krishna Ralh (“**Ralh Affidavit #1**”), para 9 and Exhibit “B”, AR Tab 12, pp 116 and 123-124.

Labrador work with the federal government to provide integrated student loans, which include both a provincial student loan and a federal student loan that are treated like a single loan as long as the debts remain in good standing. Yukon does not provide territorial student loans but works with Canada to deliver federal student loan funding. Quebec, the Northwest Territories, and Nunavut operate their own student loan programs independently from the federal government, and federal student loan funding is not available in those jurisdictions.¹³

Eligibility is based on financial need, not commercial lending criteria

18. Government student loans are generally issued based on need, to individuals who typically would not have sufficient income and assets to qualify for commercial loans, with the expectation that the loans will be repaid out of the borrower's future income after the completion of studies.¹⁴

19. For example, Alberta's *Student Financial Assistance Regulation* sets out the following eligibility criteria:

General eligibility criteria for students

8(1) Subject to other provisions of this Schedule, the eligibility criteria prescribed for the purposes of section 12(1)(a) of the Act are that the student in question must

- (a) be a full-time student except where financial assistance to a part-time student is provided for,
- (b) submit the completed application for financial assistance to the Minister within the time stipulated by the Minister,
- (c) be resident in Alberta,
- (d) establish to the Minister's satisfaction that the student is in financial need, taking into account the financial resources available to the student, and

¹³Ralh Affidavit #1, *supra* note 12, para 9 and Exhibit "B", AR Tab 12, pp 116 and 123-124.

¹⁴ *Mallory*, *supra* note 2 at paras 7 and 77-78; Affidavit #2 of Krishna Ralh ('**Ralh Affidavit #2**'), para 4 and Exhibit "A", Appellant's Record at 135 and 137-138; *Student Financial Assistance Regulation*, Alta Reg 298/2002 ['Alta Reg'], [Schedule 2](#), s 8(1)(d); *Saskatchewan Student Direct Loans Regulations*, RRS c S-61.1 Reg 1, ['Saskatchewan Reg'], s 4(c); *Student Aid Regulation*, Man Reg 143/2003, ['Man Reg'], s 13; *Ontario Student Grants and Ontario Student Loans*, O Reg 70/17 ['Ontario Reg'], s 10; *Act respecting financial assistance for education expenses*, CQLR c A-13.3 ['Quebec Education Assistance Act'], s 3; *Student Financial Assistance Administration Regulations*, NLR 106/03 ['Newfoundland Admin Reg'], ss 3(1)(e) and 10-13; *General Regulation*, NB Reg 2007-78 ['New Brunswick Reg'], s 17(b); *Direct Student Loan Regulations*, NS Reg 342/2008 ['Nova Scotia Reg'], s 5(1)(b); *Student Financial Assistance Act General Regulations*, PEI Reg EC709/10 ['PEI Reg'], ss 10(1)(c) and 12(2) and (3); *Student Financial Assistance Regulations*, RRNWT 1990, c S-20 ['NWT Reg'], ss 14-15 and 17(1); *Student Financial Assistance Regulations*, RRNWT (Nu) 1990 c S-20 ['Nunavut Reg'], ss 14-17.

(e) have an academic history that is acceptable to the Minister.¹⁵

20. Government student loan programs lend money, without interest or at a relatively low interest rate, to precisely those people who cannot obtain financing from commercial lenders (or, at best, to whom commercial lenders might lend money at a high interest rate). If student loans were treated like ordinary commercial debts in a bankruptcy, this characteristic of student loan programs would increase the risk of opportunistic bankruptcies among recent graduates who have not had time to earn a meaningful income or accumulate assets.

21. Paragraph 178(1)(g) is intended to address this concern by requiring that government student loans be in repayment for at least seven years before they are treated like other debts in a bankruptcy. It is ineffective if the multiple-date approach is accepted because a return to (or continuation of) student status defers the borrower's repayment obligations.

Student status is defined in the applicable legislation or policies under that legislation

22. Student status in a particular period of studies does not depend on whether the borrower receives further student loan funding for that period of studies. Rather, it depends on the borrower's course load, enrolment in an approved program at an approved educational institution, and any other requirements set out in the applicable student loan legislation, such as the requirement to submit a confirmation of enrolment.

23. Alberta's *Student Financial Assistance Regulation* defines "full-time student", in relevant part, as follows:

"full-time student" means ... a student who is enrolled in not less than
(i) 60%, or
(ii) 40% if a student has a permanent disability or a persistent or prolonged disability, of a full-time program of study in the semester in question at one or more post-secondary educational institutions¹⁶

24. Alberta's *Student Financial Assistance Act* defines "student" as follows:

"student" means an individual who is enrolled in a program of study at an educational institution, both the program and the institution having been approved by the Minister for the purposes of this clause¹⁷

¹⁵ *Alta Reg*, *supra* note 14, Schedule 2, s. 8(1)

¹⁶ *Ibid*, Schedule 1, s 1(1)(f) and Schedule 2, s 1(1)(h).

¹⁷ *Student Financial Assistance Act*, SA 2002, c S-20.5, s 1(1)(m).

25. Most other Canadian jurisdictions, including British Columbia, also define “full-time student” to mean (at least with respect to students who do not have a disability) a student enrolled in 60% of a full course load at a designated or approved educational institution. Other requirements, such as the requirement to submit a confirmation of enrolment, are built into some of the definitions. While the course load requirement varies in some jurisdictions, all provinces and territories that offer student loans define the term “full-time student” or “full-time studies” in a statute, regulation, or policy.¹⁸

Student status is important because it affects repayment and interest obligations

26. For the purposes of government student loan programs, full-time student status is significant for three reasons:

- (a) It is a condition of eligibility for full-time student loan funding for a study period.

¹⁸ British Columbia does not have a legislated definition but defines “full-time student” in a policy under its legislation: Ralh Affidavit #1, *supra* note 12, para 13 and Exhibit “C”, AR Tab 12, pp 117 and 125–126. Manitoba and Ontario use the term “qualifying student” in their legislation, but their policies under that legislation use the terms “full-time student” or “full-time studies”: Ralh Affidavit #1, *supra* note 12, para 14 and Exhibits “D” and “E”, AR Tab 12, pp 117 and 127–130; *Man Reg*, *supra* note 14, ss 1 (definition of “qualifying student”), 10, 20, and 22; *Ontario Reg*, *supra* note 14, s 2(1) (definition of “qualifying student”) and 24–26. New Brunswick’s legislation uses the defined term “qualifying student” but also refers to a “full-time student” and uses the latter term in its policy: Ralh Affidavit #1, *supra* note 12, para 14 and Exhibit “F”, AR Tab 12, pp 117 and 131–132; *Post-Secondary Student Financial Assistance Act*, SNB 2007, c P-9.315, s 1 (definition of “qualifying student”); *New Brunswick Reg*, *supra* note 14, s 17(g). Other provinces and territories define “full-time student” in legislation: *Saskatchewan Reg*, *supra* note 14, s 2(1)(j); *Quebec Education Assistance Act*, *supra* note 14, s 9; *Student Financial Assistance Regulations*, NLR 105/03 [‘*Newfoundland Reg*’], s 2(e); *Newfoundland Admin Reg*, *supra* note 14, ss 2(f) and 3; *New Brunswick Reg*, *supra* note 14, s 17(g); *Nova Scotia Reg*, *supra* note 14, s 2(f); *PEI Reg*, *supra* note 14 s 1(g), (h) and (j); *NWT Reg*, *supra* note 14, s 1(1) (definition of “full-time student”); *Nunavut Reg*, *supra* note 14, s 1(1) (definition of “full-time student”).

- (b) Payments toward an existing student loan debt generally are not required while the borrower is a full-time student, even if the borrower does not receive new student loan funding for the most recent study period.¹⁹
- (c) In jurisdictions that charge interest on student loans, interest generally does not accrue while the borrower is a full-time student.²⁰

27. The effect of student status on payment and interest obligations means that the most recent study end date is relevant to student loan funding provided for previous study periods. The end of the last study period is the date the borrower ceases to be a student for the purposes of the borrower's entire student loan debt. It is therefore wrong to say the end of an earlier study period is the date the borrower ceased to be a student for the purposes of student loan funding received for that study period.

The French version of subsection 178 (1.1) also supports the last date approach

28. The French version of section 178 further confirms that the relevant date under both paragraph (1)(g) and subsection (1.1) is the end of the borrower's last study period. The French and English versions of section 178 are equally authoritative.²¹ The shared, or common, meaning of a bilingual statute ordinarily governs.²²

29. Although the appellant is not pursuing relief under subsection 178 (1.1), this provision is relevant to the interpretation of paragraph (1)(g), since the two provisions are closely related.

¹⁹ Affidavit #2 of Krishna Ralh, *supra* note 14, paras 5, 6, and 9 and Exhibits "B", "C", "F", and "G", Appellant's Record at 135-136, 139-143, and 151-154; *Alta Reg*, *supra* note 14, [Schedule 2](#), ss 24(1)(c) and 32(1); *Saskatchewan Reg*, *supra* note 14, at ss 2(1)(m) and (n) and 11; *Man Reg*, *supra* note 14, ss 21 and 24(1); *Ontario Reg*, *supra* note 14, s 23(1); *Quebec Education Assistance Act*, *supra* note 14, ss 23 and 25; *Newfoundland Reg*, *supra* note 14, s 5.2; *PEI Reg*, *supra* note 14, s 26; *NWT Reg*, *supra* note 14, ss 21 and 24(1); *Nunavut Reg*, *supra* note 14, ss 21 and 24(1).

²⁰ Ralh Affidavit #2, *supra* note 12, paras 8-9 and Exhibits "E" and "F", AR at 136 and 147-152; *Alta Reg*, *supra* note 14, [Schedule 2](#), ss 24(1)(c) and 32(1); *Saskatchewan Reg*, *supra* note 14, ss 2(1)(m) and (n), 9, and 11; *Man Reg*, *supra* note 14, ss 21 and 24(1); *Ontario Reg*, *supra* note 14, ss 23(1) and 30(1); *Quebec Education Assistance Act*, *supra* note 14, ss 23 and 24; *Newfoundland Reg*, *supra* note 14, s 5.9(7); *Nova Scotia Reg*, *supra* note 14, s 11; *PEI Reg*, *supra* note 14, s 26; *NWT Reg*, *supra* note 14, ss 21 and 29; *Nunavut Reg*, *supra* note 14, ss 21 and 29(1).

²¹ *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 18(1); Official Languages Act, RSC 1985, c 31 (4th Supp), s 13.*

²² *R. v. Daoust*, 2004 SCC 6, at para 26.

30. Subsection 178(1.1) allows a court to order that paragraph 178(1)(g) does not apply if the court is satisfied that the borrower has acted in good faith and will be unable to pay the debt because of financial hardship. The order may be made “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”.

31. In English, both paragraph (1)(g) and subsection (1.1) refer to the time when the borrower ceases to be a student. Given the close connection between the two provisions, the verb “to cease” must mean the same thing in both.

32. The French version of subsection (1.1) says an order may be made “[l]orsque 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”.²³

33. Both versions of subsection (1.1) mean the same thing. The French version makes it clear an order under subsection (1.1) can be made only if the borrower is no longer a student and has not been for at least five years.

34. A literal translation of the opening words of the French provision would be “[w]hen the bankrupt who has a debt referred to in paragraphs (1)(g) or (g.1) has not been a full-time or part-time student or an eligible apprentice anymore for at least five years”. But this is not how one would normally express the idea in English. The French version conveys two key points: first, that the borrower is no longer a student, which is conveyed by the use of “ne ... plus”; and second, that the borrower has not been a student for the past five years, which is conveyed by the words “depuis au moins cinq ans”.

35. That the French version of subsection (1.1) is relevant to the interpretation of paragraph (1)(g) is supported by the British Columbia Court of Appeal’s reasoning in *Abel & Corbett*.²⁴ In *Abel & Corbett*, the French versions of provisions that were not at issue in that case, but were related to the provision at issue, were found to be relevant in interpreting the provision at issue. The reasoning in *Abel & Corbett* applies with greater force to the interpretation of section 178 of the BIA, given the close relationship between paragraph (1)(g) and subsection (1.1).²⁵

²³ BIA (French version), *LRC 1985, c B-3*, s 178(1.1).

²⁴ *R v Abel & Corbett*, 2008 BCCA 54.

²⁵ *Abel & Corbett* at paras. 56–63.

36. Paragraph (1)(g) should be interpreted consistently with the French version of subsection (1.1), meaning the date the borrower ceased to be a student is the end of the last study period.

Conclusion

37. Properly interpreted, paragraph 178(1)(g) promotes the legislative purpose of discouraging opportunistic bankruptcies by ensuring that government student loans are in repayment for a sufficient time before the borrower can be automatically released from the debt as a result of a bankruptcy or a consumer proposal. Full-time student status means that repayment is deferred, regardless of whether new student loan funding is provided, and regardless of whether there has been a break in studies or a change in programs of study. The relevant question, as the French version of subsection (1.1) confirms, is when the borrower last had student status under the applicable student loan legislation.

38. This Court should affirm the Court of Appeal's interpretation of paragraph 178(1)(g) of the BIA. The last date approach adopted by the Court of Appeal in this case – and previously by the Quebec Court of Appeal in *N.P.* – is supported by the text, context, and purpose of the statutory provision at issue. The registrars and judges in some other provinces who adopted the multiple date approach failed to apply the proper method of statutory interpretation endorsed by this Court in *Bell ExpressVu*. This Court should reject the multiple date approach and affirm the last date approach.

PART IV: SUBMISSIONS CONCERNING COSTS

39. British Columbia asks that no costs be awarded for or against it.

PART V: ORDER SOUGHT

40. British Columbia takes no position with respect to the disposition of the appeal.

All of which is respectfully submitted.

June 7, 2024



Fernando de Lima

PART VII: TABLE OF AUTHORITIES

Case law	Paragraphs in argument
<i>Attorney General of Canada v. Collins</i> , 2013 NLCA 17	3
<i>Bell ExpressVu Limited Partnership v. Rex</i> , 2002 SCC 42	4, 38
<i>Goulding (Re)</i> , 2020 NSSC 22	3
<i>Mallory (Re)</i> , 2015 BCSC 5	3, 18
<i>Piekut v. Canada (Minister of National Revenue)</i> , 2023 BCCA 181	9
<i>Québec (Procureur général) c. N.P.</i> , 2011 QCCA 726	3, 38
<i>R v Abel & Corbett</i> , 2008 BCCA 54	35
<i>R v Daoust</i> , 2004 SCC 6	28
<i>St. Dennis (Re)</i> , 2017 ONSC 2417	3
Legislation	Paragraphs in argument
<i>Act respecting financial assistance for education expenses</i> , CQLR c A-13.3, ss 3, 9, 23, 24, and 25 (French version: RLRQ c A-13.3)	18, 25, 26
<i>Bankruptcy and Insolvency Act</i> , RSC 1985, c B-3, ss 66.28(2.1), 66.4(1), and 178(1)(g) and (1.1) (French version: LRC 1985, c B-3)	1, 3, 6, 7, 8, 11, 13, 14, 15, 21, 28 – 38
BC OIC 1252/00	
<i>The Constitution Act, 1982</i> , Schedule B to the <i>Canada Act 1982</i> (UK), 1982, c 11, s 18(1)	28
<i>Direct Student Loan Regulations</i> , NS Reg 342/2008, ss 2(f), 5(1)(b), and 11	18, 25, 26
<i>Financial Administration Act</i> , RSBC 1996, c 138 s 6	
<i>General Regulation</i> , NB Reg 2007-78, s 17(b) and (g) (French version: Règl du N-B 2007-78)	18, 25
<i>Official Languages Act</i> , RSC 1985, c 31 (4 th Supp), s 13	28

Legislation	Paragraphs in argument
<p><i>Ontario Student Grants and Ontario Student Loans</i>, O Reg 70/17, ss 2(1) (definition of “qualifying student”), 10, 23(1), 24-26, and 30(1) (French version: Règl de l'Ont 70/17)</p>	18, 25, 26
<p><i>Post-Secondary Student Financial Assistance Act</i>, SNB 2007, c P-9.315, s 1 (definition of “qualifying student”) (French version: LN-B 2007, c P-9.315)</p>	25
<p><i>Saskatchewan Student Direct Loans Regulations</i>, RRS c S-61.1 Reg 1, ss 2(1)(j), (m), and (n), 4 (c), 9, and 11</p>	18, 25, 26
<p><i>Student Aid Regulation</i>, Man Reg 143/2003, ss 1 (definition of “qualifying student”), 10, 13, 20, 21, 22, and 24(1) (French version: Règl du Man 143/2003)</p>	18, 25, 26
<p><i>Student Financial Assistance Act General Regulations</i>, PEI Reg EC709/10, ss 1(g), (h) and (j), 10(1)(c), 12(2) and (3), and 26</p>	18, 25, 26
<p><i>Student Financial Assistance Act</i>, SA 2002, c S 20.5, s 1(1)(m)</p>	24
<p><i>Student Financial Assistance Administration Regulations</i>, NLR 106/03, ss 2(f), 3, and 10-13</p>	18, 25, 26
<p><i>Student Financial Assistance Regulation</i>, Alta Reg 298/2002, Schedule 1, s 1(1)(f), and Schedule 2, ss 1(1)(h), 8(1)(d), 24(1)(c), and 32(1)</p>	18, 19, 23, 26
<p><i>Student Financial Assistance Regulations</i>, NLR 105/03, ss 2(e), 5.2 and 5.9(7)</p>	25, 26
<p><i>Student Financial Assistance Regulations</i>, RRNWT (Nu) 1990 c S-20, ss 1(1) (definition of “full-time student”), 14-17, 21, 24(1), and 29(1) (French version: RRTN-O (Nu) 1990 c S-20)</p>	18, 25, 26
<p><i>Student Financial Assistance Regulations</i>, RRNWT 1990, c S-20, ss 1(1) (definition of “full-time student”), 14-15, 17(1), 21, 24(1), and 29(1) (French version: RRTN-O 1990, c S-20)</p>	18, 25, 26