

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

B E T W E E N:

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 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**

Interveners

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PARTS I and II – OVERVIEW AND QUESTION IN ISSUE

1. This appeal pertains to the interpretation of s. 178(1)(g)(ii) of the *Bankruptcy and Insolvency Act* (the “BIA”).¹ At issue is the date when an individual may obtain a release from publicly-funded student loans on discharge from bankruptcy. The British Columbia Court of Appeal (the “BCCA”) held that the seven year period in s. 178(1)(g)(ii) runs from the latest date that the individual was a student under the applicable student loan statute, regardless of whether that last period of study was financed through a loan.² The Attorney General of Ontario (“Ontario”) intervenes to submit that this interpretation is consistent with Parliament’s intent that borrowers of public funds for postsecondary study capitalize on their education before being released from their student loan debts. Ontario also submits that s. 178(1)(g) should be interpreted to complement Ontario’s legislation governing student loans, particularly since it refers expressly to provincial statutes.

2. In Ontario, an individual must begin repaying their student loan after they cease to be a “qualifying student” on the date they complete their last period of post-secondary study. An individual who stops and resumes post-secondary education ceases to be a qualifying student on a single date, namely, the date they are no longer enrolled in a post-secondary institution. It follows that the “single date” interpretation of s. 178(1)(g) operates harmoniously with Ontario’s student loan scheme.

3. Approval of the single date approach protects Ontario’s ability to recover student loans to help fund the education of future generations of students and discourages “opportunistic bankruptcies” in the context of taxpayer-funded loans. By contrast, if the multiple date theory is approved and the appeal is allowed, recipients of Ontario student loans who return to school could, through bankruptcy, be released from obligations which would otherwise remain payable.

¹ *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#) (the “BIA”), [ss. 178\(1\)\(g\)](#).

² *Piekut v Canada*, [2023 BCCA 181](#) (“*Piekut*”) at para [22](#). See also *Re Mallory*, [2015 BCSC 5](#) (“*Mallory*”) at paras [86-87](#) and *Québec (Procureur général) c N.P.*, [2011 QCCA 726](#) (“*NP*”) at para [51](#).

PART III – STATEMENT OF ARGUMENT

1. “Fresh Start” Principle is not Unlimited

4. The *BIA* permits an honest but unfortunate debtor to obtain a discharge from debts so that they can reintegrate into society free from liabilities they cannot pay.³ However, while it is a key objective of the *BIA*, the debtor’s financial rehabilitation is not unlimited. In balancing the “fresh start” with other policy objectives, Parliament determined that the liabilities listed in s. 178(1) are exceptions to the general rule in s. 178(2) that the bankrupt is released from debts on discharge. Section 178(1) reflects the overriding social policy that the satisfaction of the specified debts takes priority over any benefit to society from the release of those debts on the bankrupt’s discharge.⁴

5. Ontario intervenes to address the interpretation of s. 178(1)(g) which pertains to the release of publicly-funded student loans in bankruptcy:⁵

178(1) An order of discharge does not release the bankrupt from

(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.

2. Harmonious Interpretation Between s. 178(1)(g) and Provincial Legislation

6. As confirmed by this Court, the harmonious interpretation of federal and provincial legislation is preferred since Parliament intends its laws to co-exist with provincial laws, especially in the bankruptcy context.⁶ Absent a genuine inconsistency, a harmonious interpretation allows

³ Houlden and Morawetz, *Bankruptcy Law of Canada*, 4th ed (Toronto: Carswell, 1992) (loose-leaf updated 2023, release 9), § 1:4. Purposes of Bankruptcy and Insolvency Legislation; *Korea Data Systems (USA), Inc. v Amazing Technologies Inc.*, [2015 ONCA 465](#) at para [55](#).

⁴ *Simone v Daley*, [\[1999\] OJ No 571 \(CA\)](#) at para 30.

⁵ *BIA*, [s. 178\(1\)\(g\)](#).

⁶ *Marine Services International Ltd v Ryan Estate*, [2013 SCC 44](#) at paras [77 and 79](#); *Canadian Western Bank v Alberta*, [2007 SCC 22](#) at para [37](#); *Alberta (Attorney General) v Moloney*, [2015 SCC 51](#) (“*Moloney*”) at para [27](#).

for the concurrent operation of both laws as intended.⁷ This approach is also supported by the modern approach to statutory interpretation.⁸

7. A harmonious interpretation of s. 178(1)(g) and provincial legislation is contemplated by Parliament in the words of s. 178(1)(g) itself, which expressly refer to “any enactment of a province that provides for loans...to students.”⁹ Provincial legislation is also relevant because the Court’s interpretation of s. 178(1)(g) will determine what student loans granted by a province under its loan scheme will survive discharge from bankruptcy.

3. Ontario’s Student Loan Regime

8. Ontario grants student loans to pursue post-secondary study through the Ontario Student Assistance Plan¹⁰, as administered under the *Ministry of Training, Colleges and Universities Act*¹¹ and related regulations. This statutory scheme works together with federal legislation to create a coordinated system for the provision of student loans to “qualifying students” in Ontario.

9. To obtain a student loan, an individual must apply to the Minister and specify the period of study for which they need the loan and the approved institution and program which they attend or plan to attend.¹²

⁷ *Moloney* at para [27](#).

⁸ *Bell ExpressVu Ltd. Partnership v. Rex*, [2002 SCC 42](#) (“*Bell ExpressVu*”) at para [26](#). In addition, federal legislation such as the *BIA* is “...deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”: *Interpretation Act*, [RSC 1985, c. I-21, s. 12](#). (See, also, *Bell ExpressVu* at para [26](#).)

⁹ Of the nine subsections under s. 178(1) listing the debts that survive a discharge from bankruptcy, only s. 178(1)(g) refers to provincial legislation.

¹⁰ Ontario Student Assistance Program or “OSAP.”

¹¹ *Ministry of Training, Colleges and Universities Act*, [RSO 1990, c. M.19](#) (the “*MTCU Act*”), [s. 7.1\(1\)-\(2\)](#). The *MTCU Act* is administered by the Minister of Colleges and Universities (the “Minister”). (Responsibility for the *MTCU Act*, “except in respect of training and skills development” has been assigned to the Minister of Colleges and Universities ([OIC 1189/2022, Appendix](#).) Ontario also makes grants to post-secondary students: *MTCU Act*, [s. 5](#).

¹² Ontario Student Grants and Ontario Student Loans, [O. Reg 70/17](#) (“O. Reg 70/17”), [s. 3\(1\)](#).

10. To be eligible for OSAP, an individual must: (i) be a Canadian citizen, permanent resident or protected person under the *Immigration and Refugee Protection Act*;¹³ (ii) meet residency requirements; (iii) be enrolled at an approved institution; (iv) be taking at least the minimum required course load for the period of study¹⁴ at the approved institution; and (v) meet financial eligibility requirements.¹⁵ An individual meets the financial eligibility requirements if, in the Minister's opinion, the individual needs the student loan to pursue an approved program of study.¹⁶

11. The status of "qualifying student" is central to Ontario's student loan scheme. An individual is a qualifying student during a period of study:

- (i) for which they received a student loan;¹⁷ or
- (ii) for which they did not receive a student loan if¹⁸ they:
 - (a) continue to meet the citizenship/*IRPA* eligibility requirement¹⁹ and submit the institution's confirmation of enrolment to the Minister;²⁰ or
 - (b) demonstrate that they are enrolled but were unable to obtain a document from the institution confirming enrolment.²¹

In all cases, enrolment for a period of study, and not receipt of a student loan, is required to be a qualifying student.

¹³ *Immigration and Refugee Protection Act*, [SC 2001, c. 27](#) ("*IRPA*").

¹⁴ The period of study of an approved program of study is the period of time that the approved institution considers to be the normal school year for that particular program.: O. Reg 70/17, [s. 7\(2\)](#).

¹⁵ O. Reg 70/17, [s. 5](#).

¹⁶ O. Reg 70/17, [s. 10\(1\)](#).

¹⁷ O. Reg 70/17, [s. 24\(1\)](#).

¹⁸ O. Reg 70/17, [s. 24\(2\)](#).

¹⁹ O. Reg 70/17, [s. 5\(1\)\(a\)](#).

²⁰ O. Reg 70/17, [s. 25](#). An individual must be enrolled in 60% of what the institution considers to be a full course load if the person does not have a disability and 40% of what the institution considers to be a full course load if the person has a disability: O. Reg 70/17, [s. 9\(a\)-\(b\)](#).

²¹ O. Reg 70/17, [s. 26](#).

12. Similarly, non-enrolment for a period of study dictates when an individual ceases to be a qualifying student.²² Examples include when an individual withdraws from the institution or where the program or institution is no longer approved. When an individual stops and then resumes post-secondary study, the plain meaning of "ceased to be a qualifying student" in Ontario's scheme is the date when the individual ended their last period of study. Therefore, the receipt of a loan does not determine when an individual ceases to be a qualifying student.

13. In the Ontario student loan context, "the date on which the bankrupt ceased to be a full- or part-time student" in s. 178(1)(g) is analogous to "the date on which the bankrupt ceased to be a qualifying student" under the *MTCU Act* regulations. Under both Ontario and federal legislation, the governing date is the date when the individual is no longer enrolled in a post-secondary program.

14. Ontario's student loan regime includes the following key features related to the granting and repayment of loans:

- a. The Minister may issue a notice of assessment to an individual eligible for a student loan which sets out the loan amount to be issued.²³

²² O. Reg 70/17, [s. 27\(1\)](#). An individual also ceases to be a qualifying student at the end of a period of study if they become bankrupt or engage the *BIA* during a period of study: O. Reg 70/17, [s. 27\(1\)7](#). An individual may still be a qualifying student after the end of the period of study during which they became bankrupt if: (i) they receive a notice of assessment (O. Reg 70/17, [s. 18](#)); or (ii) if they do not receive a loan for a period of study and (a) continue to meet the citizenship/residency/*IRPA* eligibility requirement (O. Reg 70/17, [s. 5\(1\)\(a\)](#)) and submit the institution's confirmation of enrolment to the Minister (O. Reg 70/17, [s. 25](#)) or (b) demonstrate to the Minister that they are enrolled but are unable to obtain the institution's confirmation of enrolment (O. Reg 70/17, [s. 26](#)).

²³ O. Reg 70/17, [s. 18\(1\)](#).

- b. The Minister then grants a student loan if the individual has: (i) received a notice of assessment, (ii) entered into a Master Student Financial Assistance Agreement²⁴ and (iii) received confirmation of enrolment from their institution.²⁵
- c. While an individual is a qualifying student, their obligation to make any student loan payments is suspended and interest does not accrue.²⁶
- d. After ceasing to be a qualifying student, all of the individual's student loans respecting all periods of study are consolidated. The individual must execute a consolidated loan agreement²⁷ setting out the repayment terms for "the principal amount of *all* outstanding student loans issued under the Act...and the interest on the outstanding balance from time to time".²⁸ If the individual does not sign a consolidation agreement in the prescribed time,²⁹ the Minister may fix such terms.³⁰
- e. If an individual with outstanding student loans returns to school (thereby again becoming a qualifying student), when they next cease being a qualifying student, they must execute a new consolidated loan agreement. The new consolidated loan agreement supersedes the previous loan agreement.³¹
- f. Interest begins to accrue on the first day of the month after the month when the individual ceases to be a qualifying student.³² An individual must begin paying

²⁴ Under O. Reg 70/17, [s. 21](#). The [Canada - Ontario Master Student Financial Assistant Agreement](#) (the "MSFAA"), publicly available at <https://www.csnpe-nslsc.canada.ca/en/additional-resources>, applies to all loans granted to an individual (except micro-credential loans: O. Reg 70/17, [s. 21\(2\)](#)). See also Amended Factum of the Respondent, footnote 58.

²⁵ O. Reg 70/17, [s. 20\(1\)](#).

²⁶ O. Reg 70/17, [s. 23\(1\)](#). This subsection does not apply until the individual has paid any interest accrued while not a qualified student that has been demanded by the Minister: O. Reg 70/17, [s. 23\(2\)](#).

²⁷ O. Reg 70/17, [ss. 28\(1\)-\(2\)](#).

²⁸ O. Reg 70/17, [s. 28\(4\)](#) (emphasis added).

²⁹ within six months of ceasing to be a qualifying student: O. Reg 70/17, [s. 28\(3\)](#).

³⁰ O. Reg 70/17, [s. 29\(1\)](#).

³¹ O. Reg 70/17, [s. 28\(5\)](#).

³² *MTCU Act*, [s. 7.2\(1\)\(a\)](#).

interest³³ and principal³⁴ about seven months after they cease being a qualifying student. An individual may extend this period by another six months in certain circumstances.³⁵

- g. Repayment assistance is available to eligible borrowers who have difficulty paying student loans.³⁶ If eligible, an individual may receive assistance by way of the reduction of an individual's monthly payments or assistance from the Minister in paying off an individual's student loans.³⁷

4. Single Date Approach Supports Statutory Purposes of Ontario Legislation and s. 178(1)(g)

15. Individuals who receive student loans from Ontario benefit from financial assistance on favourable terms unavailable from commercial lenders. They also benefit from the non-accrual of interest and suspension of all student loan payments while attending a post-secondary institution. Borrowers do not begin repaying until about seven months after completing their studies. Should they decide to pursue further education in the future, these same terms would apply anew. The OSAP terms therefore benefit post-secondary students on an individual level and, by making post-secondary education more accessible, society more broadly.

16. Parliament's concerns about the continued viability of publicly-funded student loan programs and "opportunistic bankruptcies" in connection with loans granted under those programs underpin the non-release of this liability on discharge from bankruptcy under s. 178(1)(g).³⁸ It is reasonable to expect individuals who receive public funds for their studies to reimburse the public purse, particularly where, as in Ontario, grants and repayment assistance are also available. Otherwise, the funding of future student loan programs may be jeopardized. Section 178(1)(g)(ii) ensures that Ontario student loans will not be released on discharge unless the recipient has had an opportunity to enter the workforce and benefit from their education to potentially improve their earning capacity, asset base and ability to repay their loan.

³³ O. Reg 70/17, [s. 30\(1\)](#).

³⁴ Or such later time as may be prescribed under the *MTCU Act*: MFSAA, s. 8(b).

³⁵ O. Reg 70/17, [ss. 31 and 33](#).

³⁶ O. Reg 70/17, [ss. 37-43](#).

³⁷ O. Reg 70/17, [s. 37\(2\)](#).

³⁸ *Mallory* at paras [71](#), [77](#) and [86](#), *NP* at paras [45](#) and [51](#), *Piekut* at para [21](#).

17. Accordingly, when read in their ordinary sense and harmoniously with the scheme and object of the *BIA* as well as the intent underpinning Ontario’s student loan legislation,³⁹ the words “the date on which the bankrupt ceased to be a full- or part-time student” in s. 178(1)(g)(ii) mean “the date when the individual’s last study period ended”. If the individual returns to studies, the seven-year period in s. 178(1)(g)(ii) resets and recommences on the date the new study period ends. Resetting the clock upon the resumption of studies acknowledges the cumulative effect of gains acquired by the debtor over the course of their post-secondary studies.

18. By contrast, tying the words “ceased to be a student” in s. 178(1)(g)(ii) to the last period of study for which the individual received a publicly-funded loan frustrates both Parliamentary legislative intent and Ontario’s student loan legislation. The statutory purpose would be further thwarted if an individual returns to studies and the seven-year period does not reset upon their return but, instead, continues running from the date the initial study period ended. In that scenario, under Ontario’s loan scheme, the borrower could benefit from a release on discharge from bankruptcy, having already benefitted from periods of suspended payments and non-accrual of interest. Such a result is contrary to the legislative intent underlying Ontario’s scheme which provides beneficial terms during post-secondary study.

5. Single Date Approach Complements Loan Consolidation in Ontario Legislation

19. Ontario has addressed an individual’s return to school and resumption of qualifying student status in the context of loan administration and indebtedness. Ceasing to be a qualifying student in Ontario’s student loan regime triggers the consolidation of all existing loans into one loan and repayment of that global amount.⁴⁰ Ontario legislation expressly recognizes that an individual can be a qualifying student more than once and will therefore cease to be a qualifying student more than once.⁴¹

20. A “multiple date interpretation” of s. 178(1)(g)(ii) requires a loan to be parsed out from the single consolidated debt mandated by Ontario’s legislation. Such an interpretation renders the

³⁹ *Bell ExpressVu* at para [26](#).

⁴⁰ See para 14(d) above and O. Reg 70/17, [s. 28\(5\)](#).

⁴¹ O. Reg 70/17, [s. 28\(5\)](#). See para 14(e) above.

consolidation of Ontario student loans ineffectual and undermines Ontario’s statutory student loan scheme.

21. By contrast, the single date approach is consistent with the consolidation of loans under Ontario’s regime. After the conclusion of the individual’s post-secondary education, they must pay the amount owed under their final consolidation agreement. A single date gives rise to this obligation: the date the individual ceases to be a qualifying student for the last time.

6. Subsections 178(1)(g) and 178(1.1) to be Interpreted Consistently

22. In enacting s. 178(1.1), Parliament provided the Court with discretion to grant an individual a “fresh start” with respect to a student loan owed to a government lender, even though the debt survives discharge from bankruptcy under s. 178(1)(g).⁴² A debtor must wait five years after ceasing to be a student before requesting relief under s. 178(1.1).⁴³ Parliament could have imposed a shorter waiting period before permitting a hardship application to be commenced but chose not to do so. Therefore, Parliament has signaled that limiting the release of publicly-funded student loans through bankruptcy remains an important legislative objective.

23. Further, a proper interpretation of s. 178(1)(g) requires a harmonious reading with s. 178(1.1). These provisions “are closely connected”⁴⁴ as s. 178(1.1) impacts the application of s. 178(1)(g). Both centre on the date the individual ceased to be a student. As held by the BCCA, the single date interpretation of s. 178(1)(g)(ii) considers “the informative effect of s. 178(1.1)”.⁴⁵

⁴² *BIA*, [s. 178\(1.1\)](#): 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.

⁴³ *BIA*, [s. 178\(1.1\)](#).

⁴⁴ *Mallory* at para 69.

⁴⁵ *Piekut* at para 23.

PART IV – SUBMISSIONS ON COSTS

- 24. Ontario seeks no costs and asks that no costs be awarded against it.
- 25. Ontario has been granted oral arguments not exceeding five minutes at the hearing. Ontario seeks no further orders.

PART V – ORDER

- 26. Ontario takes no position on the outcome of this appeal.


PART VI – SUBMISSIONS ON PUBLICATION

N/A


ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of June 2024.

Per:

Per:



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PART VII – AUTHORITIES

Caselaw

No.	Authority	Paragraph Reference
1.	<i>Alberta (Attorney General) v Moloney</i> , 2015 SCC 51	6
2.	<i>Bell ExpressVu Ltd. Partnership v. Rex</i> , 2002 SCC 42	6, 17
3.	<i>Canadian Western Bank v Alberta</i> , 2007 SCC 22	6
4.	<i>Korea Data Systems (USA), Inc. v Aamazing Technologies Inc.</i> , 2015 ONCA 465	4
5.	<i>Marine Services International Ltd v Ryan Estate</i> , 2013 SCC 44	6
6.	<i>Piekut v Canada</i> , 2023 BCCA 181	1,16, 23
7.	<i>Québec (Procureur général) c N.P.</i> , 2011 QCCA 726	1
8.	<i>Re Mallory</i> , 2015 BCSC 5	1
9.	<i>Simone v Daley</i> , [1999] OJ No 571 (CA)	30

Other Source Documents

No.	Secondary Source	Paragraph Reference
1.	Houlden and Morawetz, <i>Bankruptcy Law of Canada</i> , 4th ed (Toronto: Carswell, 1992) (loose-leaf updated 2023, release 9), § 1:4. Purposes of Bankruptcy and Insolvency Legislation	4
2.	Canada - Ontario Master Student Financial Assistant Agreement	14

Statutes, Regulations, Rules, etc.

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
1.	<i>Appendix - Order in Council 1189/2022</i>	Generally
	<i>Annexe - Décret 1189/2022</i>	En général
2.	<i>Bankruptcy and Insolvency Act</i> , RSC 1985, c B-3	ss. 178(1)(g) s. 178(1.1)
	<i>Loi sur la faillite et l'insolvabilité</i> , LRC 1985, c B-3	ss. 178(1)(g) s. 178(1.1)
3.	<i>Immigration and Refugee Protection Act</i> , SC 2001, c. 27	
	<i>Loi sur l'immigration et la protection des réfugiés</i> , LC 2001, c 27	
4.	<i>Interpretation Act</i> , RSC 1985, c. I-21	s. 12
	<i>Loi d'interprétation</i> , LRC 1985, c I-21	s. 12
5.	<i>Ministry of Training, Colleges and Universities Act</i> , RSO 1990, c. M.19	s. 5 s. 7.1(1)-(2) s. 7.2(1)(a)
	<i>Loi sur le Ministère de la Formation et des Collèges et Universités</i> , LRO 1990, c M.19	s. 5 s. 7.1(1)-(2) s. 7.2(1)(a)
6.	Ontario Student Grants and Ontario Student Loans, O. Reg 70/17	s. 3(1) s. 5. s. 5(1)(a) s. 5(1)(a) s. 7(2) s. 9(a)-(b) s. 10(1) s. 18(1) s. 20(1) s. 21

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
		s. 21(2) s. 23(1) s. 23(2) s. 24(1) s. 24(2) s. 25 s. 26 s. 27(1) s. 27(1)7 ss. 28(1)-(2) s. 28(3) s. 28(4) s. 28(5) s. 29(1) s. 30(1) ss. 37-43 s. 37(2)
	<i>Subventions ontariennes d'études et prêts ontariens d'études,</i> Règl de l'Ont 70/17	s. 3(1) s. 5 s. 5(1)(a) s. 7(2) s. 9(a)-(b) s. 10(1) s. 18(1) s. 20(1) s. 21 s. 21(2) s. 23(1) s. 23(2) s. 24(1) s. 24(2)

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
		s. 25 s. 26 s. 27(1) s. 27(1)7 ss. 28(1)-(2) s. 28(3) s. 28(4) s. 28(5) s. 29(1) s. 30(1) ss. 37-43 s. 37(2)