S.C.C. File Number: 40782

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

BETWEEN:

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

INTERVENERS

APPELLANT'S REPLY TO INTERVENER FACTUMS

(Pursuant to the Order of Justice Côté, dated April 29, 2024)

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REPLY OF THE APPELLANT TO THE INTERVENERS

1. The Appellant submits this response to the factums of the Interveners Attorney General of Ontario ("**Ontario**"), His Majesty the King in right of the Province of British Columbia, as represented by the Minister of Finance ("**British Columbia**"), Procureur Général du Québec ("**Québec**"), Canadian Alliance of Student Associations, and Association of Insolvency and Restructuring Professionals.

(a) The French version of s. 178(1.1)

2. The French version of s. 178(1.1) of the *Bankruptcy and Insolvency Act* (***BIA***)[1] does not offer a definitive and conclusive answer to the appropriate interpretation of subsection (1)(g), as the English and French versions of subsection (1.1) each have a near identical, if not same, meaning. When both versions of a provision have the same meaning, there is an increased presumption in favour of their ordinary meaning.[2]

3. British Columbia asserts that the French version conveys two main ideas: "first, that the borrower is no longer a student […] and second, that the borrower has not been a student for the past five years."[3] While the English and French provisions are not identical, the French version of subsection (1.1) does not clarify the fundamental question underlying both subsections (1)(g) and (1.1) of when precisely the seven or five-year timer begins to start relative to when the bankrupt was last a student. Therefore, the French provision (1.1) is unable to resolve the meaning of subsection (1)(g).

4. In the English version of (1.1), it is equally unclear whether the time begins when the bankrupt "[ceased] to be a full- or part-time student" with respect to the loan in question, or when the bankrupt "[ceased] to be a full- or part-time student" generally. In the French version of (1.1), it is similarly unclear whether the timer begins when the bankrupt is no longer a student with respect to the loan in question, or no longer a student generally. While these versions have a shared meaning in that it communicates the same idea, the meaning is ambiguous in each version. The

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[1] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (***BIA***).
[2] *R. v. Barnier*, 1980 CanLII 184 (SCC), [1980] 1 SCR 1124 at pp. 1135-1137.
[3] Factum of the Intervener, British Columbia, dated June 7, 2024, at para. 24.

Court should therefore rely on the ordinary meaning of the provisions and other tools of statutory interpretation in analysing s. 178(1)(g)(ii).

5. In the alternative, should it be found that the ordinary meaning of the French version of subsection (1.1) evidences a single-date approach, and that this ordinary meaning may plausibly be attributed to both versions, this shared meaning should be rejected. The shared meaning of a provision is not determinative and is ambiguous. It may be discarded in favour of a meaning that may only plausibly be attributed to one of the versions of a provision if other indicators of meaning show the shared meaning is inappropriate.[4]

(b) Multiple Date Approach may still be harmoniously interpretated with the *BIA* and other legislation

6. Ontario and British Columbia state that s. 178(1)(g) under the *BIA* must be interpreted harmoniously with the applicable federal or provincial student loan legislation ("**Applicable Legislation**"). In asserting that a single-date approach is most harmonious with the Applicable Legislation, each relies in part on the fact that a student may be considered a qualifying student under the Applicable Legislation for the duration of a study period even if the student has not received a further loan. The date at which the debtor ceased to be a student is not linked to the study period for which the debtor last received a loan. They submit therefore that the date the debtor was last a qualifying student is the appropriate date at which to begin running the timer for the purposes of s. 178(1)(g).

7. While the Appellant agrees that the *BIA* should be interpreted harmoniously with the Applicable Legislation, the above is an incorrect framing of the issue before the Court. It inappropriately places the emphasis on whether the bankrupt qualified as a student under the Applicable Legislation within seven years of filing for bankruptcy. It is conceded and admitted by the Appellants that Ms. Piekut was a qualifying student under the Applicable Legislation, when she finished her studies at the University of British Columbia in 2009. However, Ms. Piekut ceased to be a student many times during her education pursuits – in 1994, 1995, 2003, and finally in 2009. The issue before the Court is not to determine the last time a debtor was a qualifying student under the Applicable Legislation. That fact is often easily discernable and admitted but instead to

[4] *Doré v. Verdun (City)*, 1997 CanLII 315 (SCC), [1997] 2 SCR 862 at para. 25

afford a fulsome interpretation, the court should base its interpretation through, amongst others, the lens of the BIA and its social-policy principles that animate the BIA namely the fresh start principle.

8. It does not follow, as suggested by British Columbia, Quebec and Ontario, that simply because an individual qualified under the Applicable Legislation during their last period of study, s. 178(1)(g) must be referring to that last period of study. The very issue at bar is whether the phrase "ceased to be a full- or part- time student" relates to the study period connected with a specific loan in question, or whether it instead refers to the time the bankrupt last ceased to be a student. It is the former that the appellant says the operating nexus to which "ceased to be a full- or part-time student" refers to is the last time a student has received a loan under the relevant Applicable Legislation.

9. To support its contention that a single-date approach to s. 178(1)(g) is most harmonious with respect to student loan legislation, Ontario asserts that the phrase "ceased to be a qualifying student" within the Regulations of the *Ministry of Training, Colleges, and Universities Act* (***MTCUA* Regulations**) refers to the date when the individual ended their last period of study.[5] According to Ontario, the date on which an individual ceases to be a qualifying student in an Ontario student loan context is analogous to the date on which a bankrupt ceases to be a full- or part- time student under s. 178(1)(g).[6] Therefore, the interveners urge this court follow the single-date approach.

10. Ontario's analysis is unsustainable because the plain meaning of "ceased to be a qualifying student" within the *MTCUA* Regulations is not the date the individual ended their last study period. Nowhere does the *MTCUA* Regulations define "ceased to be a qualifying student" as referring to the date that the individual was *last* a qualifying student. Such a definition cannot be supported, as it would render certain provisions, such as s. 21(9)(b), irrelevant.[7]

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[5] Factum of the Intervener, Ontario, dated June 10, 2024, at para. 12.
[6] *Ibid*. at para. 13.
[7] Ontario Student Grants and Ontario Student Loans, O. Reg 70/17, s. 21(9)(b). Under this provision, individuals who entered into certain agreements under previous iterations of the

11. S. 30(1) of the *MTCUA* Regulations is also illustrative. It reads in part, "[a]n individual is not required to make payments towards the interest accruing on student loans […] until the first day of the month immediately after the six-month period following the month in which the individual ceased to be both a qualifying student and an Ontario Learn and Stay Grant student."[8]

12. Interest payments are due pursuant to this provision *each* time that an individual ceases to be qualifying student under the *MTCUA* Regulations, and if an individual did not pay the interest, it would remain due and owing regardless of whether they later again became a qualifying student absent any interest relief or provisions. Such a result is closer to the multiple-date approach than the single-date approach.

13. Quebec takes the position that the Applicable Legislation has been referentially incorporated into s. 178(1)(g) [9] and notes that referential incorporation has been reaffirmed by this court as a valid legislative drafting tool.[10] While the Appellant does not disagree that parliament or the provinces may referentially incorporate legislation, including provincial legislation into federal legislation, for similar reasons to the above arguments, this alone is not dispositive of the issue.

(c) Suitability of the single-date approach for preventing opportunistic bankruptcies

14. The Appellant agrees with Quebec, British Columbia and Ontario that one of the aims of s. 178(1)(g) is to prevent opportunistic bankruptcies. The single-date approach, however, is an overbroad protection that does not align well with achieving that aim. Not only does the single-

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Regulations will be deemed have entered into a "master student financial assistance agreement" if (*inter alia*) "[…] (b) the individual has not ceased to be a qualifying student under section 27 of the 2001 Regulation since the master student loan agreement under section 20 of the 2001 Regulation was entered into or, if the individual has ceased to be a qualifying student under the 2001 Regulation, less than two years have elapsed since the individual ceased to be a qualifying student."

[8] Ontario Student Grants and Ontario Student Loans, O. Reg 70/17, s. 30(1).
[9] Factum of the Intervener, Procureur Général du Québec, dated June 6, 2024, at para. 11.
[10] *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at paras. 122-124.

date approach result in illogical and absurd outcomes, but it is also as likely to encourage opportunistic bankruptcies as it is to prevent them.

15. The legislative history of subsection 178(1)(g) suggests that the legislature intended to enact a seven-year period that a student is required to wait before becoming eligible to discharge their student loans through a bankruptcy.[11] Both the multiple-date and single-date approach reflect this seven-year period, but only the single-date approach permits the period to be reset.

16. British Columbia and Ontario submit that this resetting provides the individual with sufficient time to capitalize on the educational "asset" they have been granted via the student loan. Yet the penalty of the reset is felt most harshly by those who have taken the most time to capitalize on their education, including those who have been out of school more than the seven-year period contemplated by s. 178(1)(g). In the case of the appellant, she will need to wait over 20 years with her periods of studies before she would be eligible to have her student loans released under the single date approach.

17. British Columbia, Quebec, and Ontario propose that such outcomes are acceptable because a debtor benefits from halted interest accrual and suspended payments on their student loans while they continue their studies. This reasoning is inadequate. The penalty incurred in the form of the seven-year timer beginning afresh is disproportionate to the benefit conferred to the debtor by the Applicable Legislation.

18. The legislature's intention to prevent opportunistic bankruptcies is better served by the multiple-date approach, alongside the mechanisms already built into the *BIA* to prevent abuse of the system such as participating in proposal or bankruptcy proceedings. If a student borrower is deemed by the student loan authorities to be engaging in opportunistic behaviour, nothing prevents the student loan authorities from objecting to a discharge from bankruptcy within the existing apparatus of the bankruptcy discharge provisions.[12]

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[11] Factum of the Intervener, Canadian Alliance of Student Associations, dated June 10, 2024, at para. 17.

[12] Factum of the Intervener Canadian Association of Insolvency and Restructuring Professionals, dated June 7, 2024, at paras. 40-41.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of June, 2024.

Cody G. Reedman
Counsel for the Appellant

TABLE OF AUTHORITIES

CASES	**Paragraph(s)**
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