File Number: 40782

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APEAL 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)

REPLY OF THE RESPONDENT HIS MAJESTY THE KING TO THE INTERVENERS' FACTUMS

ATTORNEY GENERAL OF CANADA

Department of Justice
British Columbia Regional Office
900-840 Howe Street
Vancouver, British Columbia V6Z 2S9

Per: Michael Taylor | Christa Akey
Tel: (604) 318-0118 | (604) 666-8910
Fax: (604) 666-2214
Email: michael.taylor@justice.gc.ca
christa.akey@justice.gc.ca

Counsel for the Respondent

DEPUTY ATTORNEY GENERAL OF CANADA

Department of Justice
National Litigation Sector
50 O'Connor Street, 5th Floor
Ottawa, Ontario K1A 0H8

Per: Christopher Rupar
Tel: (613) 670-6290
Fax: (613) 954-1920
Email: christopher.rupar@justice.gc.ca

Agent for the Respondent

REEDMAN LAW
800a – 1030 Georgia Street
Vancouver, BC V6E 2Y3

Per: Cody Reedman
Tel: (604) 570-0005
Email: creedman@reedmanlaw.com

Counsel for the Appellant

SUPREME ADVOCACY LLP
340 Gilmour St., Suite 100
Ottawa, ON K2P 0R3

Per: Marie-France Major
Tel: (613) 695-8855 ext 102
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for Counsel for the Appellant

MINISTRY OF ATTORNEY GENERAL
Legal Services Branch
1001 Douglas Street
Victoria BC V8W 2C5

Per: Fernando de Lima
Tel: (250) 356-8877
Email: 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
Email: 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

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

Per: 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

BORDEN LADNER GERVAIS LLP
World Exchange Plaza
1300-100 Queen Street
Ottawa, Ontario K1P 1J9

Per: Nadi Effendi
Tel: (613) 787-3562
Fax: (613) 230-8842
Email: neffendi@blg.ca

Agent for Counsel for the Intervener, Attorney General for Ontario

LAVOIE-ROUSSEAU, JUSTICE-QUÉBEC
Direction du contentieux de Québec
300, boul. Jean-Lesage, bureau 1.03
Québec, Québec G1K 8K6

Per: Janie Desautels |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 Wellingson St. W., Suite 3000
Box 270, TD South Tower
Toronto, Ontario M5K 1N2

Per: 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

Per: Anna Lund
Tel: (780) 400-1253
Email: AJLund@ualberta.ca

Counsel for the Intervener, Canadian Alliance of Student Associations

NOËL & ASSOCIÉS
2e étage
225, montrée Paiement
Gatineau, Québec J8P 6M7

Per: Pierre Landry
Tel: (819) 771-7393
Fax: (819) 771-5397
Email: p.landry@noelassocies.com

Agent for Counsel for the Intervener, Attorney General of Québec

GOWLING WLG (CANADA) LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Per: 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

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PART I — OVERVIEW

1. The arguments made by the Canadian Alliance of Student Associations (**CASA**) and the Canadian Association of Insolvency and Restructuring Professionals (**CAIRP**) largely focus on broad policies underlying the *Bankruptcy and Insolvency Act*[1] (**BIA**), including the fresh start and financial rehabilitation. Those arguments lose sight of the purpose animating the limitation in s. 178(1)(g), which is to ensure a reasonable period of time for debtors to capitalize on education obtained with public assistance before their student loans debt can be released through an insolvency process. Under s. 178(1)(g), that period of time begins when the borrower last ceases to be a full- or part-time student under the governing student loans legislation. None of CASA or CAIRP's arguments displace this unambiguous interpretation of s. 178(1)(g).

PART II — RESPONSE TO THE PROVINCIAL INTERVENER FACTUMS

2. The respondent agrees with the arguments in support of the single-date approach made by His Majesty the King in right of the Province of British Columbia, as represented by the Minister of Finance, the Attorney General for Ontario, and the Attorney General of Québec.

PART III — RESPONSE TO THE CASA AND CAIRP FACTUMS

A. Section 178(1)(g) is an exception to the fresh start rule and has its own specific purpose

3. Both CASA and CAIRP argue that the application of the single-date approach undermines the fresh start rule.[2] This argument misses the point of s. 178(1). Section 178(1) is an exception to the fresh start rule.[3] In s. 178(1), Parliament has specified certain debts that are intended to survive bankruptcy: student loans debt is one. It therefore does not assist this Court to argue that the single-date approach under s. 178(1)(g) runs afoul of the fresh start rule.

4. Both interveners stress some of the broad purposes of the BIA, including granting insolvent debtors a fresh start and enabling the financial rehabilitation of a debtor. However, the broad purposes of the BIA do not displace the specific purpose of the provision itself in the interpretive process.[4] The legislative record makes clear that the purpose of s. 178(1)(g) is to require that

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[1] RSC 1985, c B-3
[2] Factum of the Intervener, CASA [**CASA factum**] at paras 20-21; Factum of the Intervener, CAIRP [**CAIRP factum**] at paras 30 and 36.
[3] *Alberta (Attorney General) v Moloney*, 2015 SCC 51 at para 37.
[4] *Mallory (Re),* 2015 BCSC 5 at para 82.

student borrowers make a reasonable attempt to capitalize on the education obtained with public assistance, in order to repay those loans, before those loans may be released in bankruptcy. It is clear that Parliament viewed the prospect of a student borrower being released from their debts through bankruptcy before making that attempt as leading to abuses of Canada's insolvency regime, and legislated to prevent it.[5]

5. Neither intervener gives recognition to the other policy goals that Parliament balanced in enacting the limitation in s. 178(1)(g). The length of time chosen in s. 178(1)(g) was also informed by the availability of interest and other debt relief under the student loans regime. When s. 178(1)(g) was first enacted, the 2-year limitation corresponded to the time for which interest and repayment relief was available after a student ceased their studies. [6] Similarly, the 7-year limitation adopted in 2005 matched the length of time for which post-study repayment relief was then available.[7] It was a valid policy choice for Parliament to decide that student borrowers should attempt to manage and repay their debts using the relief available under the student loan legislation prior to turning to bankruptcy to receive a fresh start. This Court should give effect to Parliament's unambiguously expressed policy choices.

B. CASA incorrectly describes the time limit in s. 178(1)(g) as a "maximum waiting period"

6. CASA emphasizes that the single-date approach allows very old student loans debt to survive bankruptcy.[8] CASA's argument rests on an erroneous assumption. The age of a debt is not relevant to its treatment in bankruptcy. Debts are not released simply because they are old, and s. 178(1)(g) does not create an expiry date for student loans debt. Section 178(1)(g) merely imposes a minimum waiting period before a student borrower may be eligible to be released from student loans debt. However, there is no entitlement to have those debts released simply because seven years have passed. An insolvent person must still establish that they are insolvent and proceed through the bankruptcy or consumer proposal process, subject to the supervision of the court and, where required, the consent of creditors.

7. As explained in the respondent's factum, the 7-year period enacted by s. 178(1)(g) is not a waiting period connected to the advance of any particular loan or the completion of a period of

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[5] Respondent's factum at para 108.
[6] Respondent's factum at para 108.
[7] Respondent's factum at para 112.
[8] CASA factum at para 19.

studies for which a loan was advanced. The period is expressly connected to when the debtor possessed "full- or part-time student" status under the governing federal or provincial legislation. Nor is "full- or part-time student" status necessarily connected to the receipt of a loan. The age of the student loans debt is not relevant to ascertaining when the debtor had student status.

8. The above aligns with Parliament's purpose in enacting s. 178(1)(g) because it recognizes that debtors who return to full- or part-time student status are likely to receive continuing benefits under the student loans regime, such as suspending interest and loan repayments, and that additional education provides benefits that build on previous education in a cumulative fashion. This is so even if the subsequent education is not funded by new student loans.

9. The focus on student status in s. 178(1)(g) represents Parliament's public policy choice that returning students attempt to capitalize on their new education to repay student loans prior to turning to the insolvency regime. Parliament's policy choice should be given effect.

C. The legislative scheme requires student loans to be consolidated

10. CAIRP wrongly argues that, under current federal student loans legislation, different loan advances represent discrete debts.[9] This argument would allow older student loans to be released before newer loans as the respective 7-year periods expire. This does not accord with the legislative scheme. Under the Canada Student Financial Assistance Program, consolidation occurs in the administration of all student loans. The legislation contemplates that consolidated debt will exist going forward after a borrower ceases to hold full- or part-time student status. This framework does not lend itself to applying s. 178(1)(g) on a rolling basis as different portions of older student loans debt age out.

11. As described in the respondent's factum, the *Canada Student Loans Act*[10] (the **CSLA**) and *Canada Student Financial Assistance Act*[11] (the **CSFAA**) explicitly required the consolidation of all "guaranteed" and "risk-shared" student loans when a borrower ceased to be a student.[12] That requirement continued after the transition to direct loans under the CSFAA after 2000. Although the explicit consolidation requirement has been transferred to the Master Student Financial Assistance Agreement (**MSFAA**) that all student borrowers are required to sign, the requirement

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[9] CAIRP factum at para 21.
[10] RSC 1985, c S-23, as amended.
[11] SC 1994, c 28, as amended.
[12] Respondent's factum at para 55.

still ultimately derives from the legislation. The MSFAA is the "loan agreement" contemplated by s. 6.1 of the CSFAA. Further, the MSFAA is also a "contract in prescribed form" which qualifies as a "consolidated direct loan agreement" under s. 2(2) of the *CSFAA Regulations.*[13] Thus, CAIRP is incorrect to argue that consolidation of student loan advances is not statutorily-mandated under the CSFAA and is only a contractual arrangement that occurs on a case-by-case basis.[14] The multiple-date approach requires parsing a consolidated debt into discrete components for purposes of release, which is incompatible with the legal reality of consolidated debt.

12. In addition, in this case, the appellant's pre-2000 guaranteed loans, and post-2000 direct student loans, were in fact consolidated under the CSLA and CSFAA and their regulations.[15]

D. Section 178(1.1) provides earlier relief from the application of s. 178(1)(g) regardless of which approach is taken

13. CASA and CAIRP both argue that the single-date approach undermines the hardship relief available under s. 178(1.1).[16] This is not the case. Whether a single-date or multiple-date approach is adopted, s. 178(1.1) still allows debtors who meet its conditions to be released from student loans debt two years earlier than would be permitted by s. 178(1)(g).

14. CASA and CAIRP's main complaint seems to be that under the single-date approach, a borrower who has been out of studies long enough to become eligible to make a hardship application under s. 178(1.1) risks losing that eligibility if they return to studies. There are two flaws in this argument. First, eligibility to make a hardship application under s. 178(1.1) five years after the borrower ceased to be a full- or part-time student is not a vested right of the borrower. It is merely a threshold condition for making a hardship relief application. Second, returning to full- or part-time student status under the governing student loan legislation reactivates various benefits accorded to student borrowers under that legislation. It is reasonable for Parliament to expect that a borrower who resumes the benefits of student status must also bear the corresponding burden, which is to capitalize on their further education for a defined period of time in order to repay their loans, before becoming eligible for a release from that debt under the BIA.

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[13] SOR/95-329, as amended.
[14] CAIRP factum at para 23.
[15] Affidavit of Josée Grondin affirmed on February 18, 2020 at para 14 and Exhibit E, Appeal Record Tab 14, pp 159 and 202.
[16] CASA factum at paras 30-32; CAIRP factum at para 35.

E. The multiple-date approach has the potential to frustrate the purpose of s. 178(1)(g)

15. CASA and CAIRP both argue in favour of the multiple-date approach for preventing opportunistic bankruptcies.[17] They argue that the single-date approach catches both opportunistic and genuine bankruptcies. The flaw in this argument is that, while the multiple-date approach might prevent some opportunistic bankruptcies where a creditor opposes a discharge and the supervising court imposes some conditions, it risks entirely frustrating the purpose of s. 178(1)(g). Parliament elected not to make this trade-off.

16. The multiple-date approach permits a student borrower who retains full- or part-time student status for seven years to be eligible for release from their student loans debt without ever attempting to capitalize on their education and repay their loan. This is counter to the purpose of s. 178(1)(g) and would thwart Parliament's clear intention.[18] While not all bankruptcies by student borrowers are fairly described as "opportunistic", s. 178(1)(g) plays an important role in preventing the abuse that would result from opportunistic bankruptcies. This Court should not endorse an interpretation that removes this important bulwark against abuse of the insolvency regime.

17. Further, Parliament's intended application of s. 178(1)(g) should not be limited by the existence of ss. 172(2) and (3). Those sections provide discretion to the courts to refuse a discharge but s. 178(1)(g) is specifically intended to address student loans debt and advance particular purposes. It removes the supervising court's discretion over a specific category of debt.

PART IV — COSTS

18. Canada seeks no order for costs in relation to the interventions beyond that already ordered.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated this 17th day of June, 2024.

Michael Taylor & Christa Akey
Counsel for the Respondent

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[17] CASA factum at para 33; CAIRP factum at para 39.
[18] *Québec (Procureur général) c NP*, 2011 QCCA 726 at paras 44, 45, 46.

PART V — TABLE OF AUTHORITIES (with hyperlinks)

STATUTORY PROVISIONS			**Cited at Para.**
Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended:			
- s. 172(2) and (3)	EN	FR	17
- s. 178(1)	EN	FR	1,3,4,5,6,7,8,9,10, 13,15,16,17
- s. 178(1.1)	EN	FR	13, 14
Canada Student Financial Assistance Act, SC 1994, c 28, as amended:			
- s. 6.1	EN	FR	11
Canada Student Financial Assistance Regulations, SOR/95-329, as amended:	EN	FR	11, 12
- s. 2, definition of *consolidated risk-shared loan agreement (contrat de prêt à risque partagé consolidé)*	EN	FR	11
Canada Student Loans Act, R.S.C., 1985, s-23, as amended	EN	FR	11
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