

Date: 20130304
Docket: 12/55
Citation: *Attorney General of Canada v. Collins*, 2013 NLCA 17

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPELLANT

AND:

LESLIE ANNE COLLINS

RESPONDENT

Coram: Green C.J.N.L., Welsh and Harrington JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (G) 20120117795

Appeal Heard: February 15, 2013
Judgment Rendered: March 4, 2013

Reasons for Judgment by Welsh J.A.
Concurred in by Green C.J.N.L. and Harrington J.A.

Counsel for the Appellant: Joseph Boulos
Counsel for the Respondent: Christopher Payne

Welsh J.A.:

[1] This appeal engages the question of when a student loan may be dischargeable under the terms of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3.

BACKGROUND

[2] Leslie Collins attended post-secondary studies in two blocks of time. From September 1998 to December 2001, she attended Memorial University of Newfoundland as a full-time student. For these studies she received a student loan under the *Canada Student Financial Assistance Act*, SC 1994, c. 28 (the “*Financial Assistance Act*”).

[3] From September 2003 to August 2006, Ms. Collins attended the College of the North Atlantic completing a diploma in Geomatics Engineering Technology. She did not apply for additional financial assistance during this course of study. However, she obtained a deferral of payment of her loan under the *Financial Assistance Act* together with forgiveness of the accruing interest for this period of time. For this purpose Ms. Collins provided the necessary documentation, a Confirmation of Enrolment as provided for under the *Canada Student Financial Assistance Regulations*, SOR/95-329, and a Continuation or Reinstatement of Interest-Free Status as provided for under the *Student Financial Assistance Regulations*, NLR 105/03.

[4] Ms. Collins made an assignment in bankruptcy on December 9, 2010 and obtained an absolute discharge on September 10, 2011. However, in January 2012 she was advised by the Royal Bank of Canada that her student loan had not been discharged. She received a similar notification from Canada Student Loans in February 2012. The position of the Bank and Canada Student Loans that the loan had not been discharged was based on an interpretation of section 178(1)(g) of the *Bankruptcy and Insolvency Act* (the “*Act*”) which provides that a student loan is not dischargeable until “seven years after the date on which the bankrupt ceased to be a full- or part-time student”.

[5] In an oral decision, the applications judge determined that the proper date from which to calculate the seven years for purposes of section 178(1)(g)(ii) of the *Act* was December 2001, the date when Ms. Collins completed the course of studies for which she had obtained a student loan.

Since the assignment in bankruptcy occurred more than seven years after that date, he concluded that the loan was dischargeable under the Act.

[6] The appellant, the Minister of National Revenue (the “Minister”), submits that the applications judge erred by calculating the seven-year period from December 2001 rather than August 2006 when Ms. Collins completed her second post-secondary course of studies.

ISSUE

[7] At issue is whether the applications judge erred in determining that the seven-year delay in discharge of a student loan under the Act runs from when the bankrupt ceases to be a student in relation to that loan or whether the commencement date is re-set where the bankrupt has returned to being a student prior to the assignment in bankruptcy.

ANALYSIS

[8] Section 178(1)(g) of the *Bankruptcy and Insolvency Act* provides for a delay in the discharge of a student loan debt where an assignment in bankruptcy is made:

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;

...

[9] Because Ms. Collins had ceased to be a student when she filed an assignment in bankruptcy, subparagraph (ii) applies. That provision must be given a purposive interpretation based on the language used. Unfortunately, there are two ways in which the language may be interpreted. The question is whether the date refers to the date when the bankrupt “finally” ceased to

be a student prior to the bankruptcy or when the bankrupt ceased to be a student “in relation to the particular loan”. In assessing this question, although Ms. Collins did not obtain a student loan for her second block of studies, the analysis necessarily requires some consideration of the situation where, in fact, a second loan has been obtained.

[10] Counsel for the Minister submits that the words “full- or part-time student” must be interpreted using the definitions found in the legislation that is specified in paragraph (g). To support this submission he relies on the phrase “under the applicable Act or enactment” which appears in subparagraph (i). However, that phrase does not appear in subparagraph (ii). The inclusion of the phrase in the one and its exclusion in the other leads to the assumption that the phrase was not meant to apply to subparagraph (ii) where it is not mentioned. This is a long-standing principle of statutory interpretation. It follows that the interpretation of subparagraph (ii) is not dependent on the definitions of “full- or part-time student” in other legislation.

[11] Looking, then, at the language of section 178(1), subparagraph (ii) is governed by paragraph (g) which refers to “any debt or obligation in respect of a loan”. The reference to “a loan” in the context of this phrase supports an interpretation that the provision applies to a particular loan, rather than cumulative loans. When read with subparagraph (ii), this language supports the conclusion that the seven-year period runs from the date on which the bankrupt ceased to be a student in relation to that particular loan. I agree with the position expressed in *Re: Hildebrand*, 2010 SKQB 321, 360 Sask. R. 128, which would apply equally where the individual, upon returning to school, did not obtain a further student loan:

[31] There is nothing in this provision to suggest or even imply that the date the bankrupt ceased to be a full- or part-time student must somehow relate or connect to the totality of his or her government student loans. In my view, this language supports the opposite conclusion, that is, whether a student loan debt survives depends on when the bankrupt ceased to be a full- or part-time student *in relation to that debt*. ...

(Italics in original.)

[12] However, counsel for the Minister submits that the deferral of payment and forgiveness of interest during Ms. Collins’ second block of post-secondary studies has the effect of re-setting the date for purposes of

the seven-year calculation to August 2006. For the following reasons, this submission is not persuasive.

[13] During an additional course of studies, the debt from a prior loan is not extinguished, but merely deferred. Had Parliament intended to calculate the seven-year period taking the deferred time into account, by either re-setting the start date or exempting the deferral time from calculation of the seven years, section 178 could have been drafted to achieve that objective. However, the provision is silent as to events that occur after the debtor ceased to be a student with respect to the loan at issue. There is nothing in section 178 to indicate that Parliament was concerned with the nature of activities the student was undertaking during the referenced seven years, including additional studies.

[14] To interpret section 178(1)(g)(ii) without regard to events occurring after the bankrupt ceased to be a student in relation to the particular loan is consistent with the purpose as well as the language of the Act. A helpful summary of the purpose of the Act, in the context of a student loan, is found in *Minto, Re* (1999), 14 C.B.R. (4th) 235 (Sask. Q.B.), at paragraph 16:

...

5. The broad purpose of the *Act* is to permit honest but unfortunate debtors to obtain a discharge from their obligations in order to facilitate a return to stable participation in social and economic life, while balancing this objective against the interests of creditors. Section 178(1)(g) reflects a policy decision which accords with this objective and recognizes that student loans involve a situation where funds are advanced when there is no existing capacity of the debtor to repay the debt, but education obtained will hopefully enable the debtor to begin active and fruitful participation in the economy at some later date. Realization of earning potential associated with education can take some period of time after leaving school, so Parliament saw fit to disallow the immediate discharge of student loans, in this case for two years [now seven years] after ceasing to be a student. This measure addressed the perceived abuse of students using the *Act* to obtain a discharge of student loans prior to making reasonable efforts to realize upon their earning potential achieved through education.

[15] I would add that, consistent with the above principles, the language of section 178(1) of the Act is properly construed narrowly because it operates “as an exception to the fresh start principle” which underlies the *Bankruptcy and Insolvency Act* (*Re: Hildebrand, supra*, at paragraph 34).

[16] The above analysis of the language and purpose of the Act leads to the conclusion that the seven-year delay in discharging a student loan debt begins to run from the date when the debtor ceased to be a student in relation to that loan. However, the Minister submits that this Court should follow the decision in *Quebec (Attorney General) v. N.P.*, 2011 QCCA 726, 83 C.B.R. (5th) 1, which reaches a contrary conclusion. In *N.P.*, Leger J.A., for the Court, summarized:

[51] In summary, I believe that paragraph 178(1)(g) of the [*Bankruptcy and Insolvency Act*] refers to one single date when studies end. The clock is turned back to zero when a student goes back to school. In my opinion, this is the only interpretation that respects the legislator's intention to avoid opportunistic bankruptcies, to give the Minister the opportunity to recover loans granted under more than advantageous conditions, and finally, to ensure that the right to bankruptcy is reasonably exercised, after a period that gives the student time to build on his assets so acquired.

[17] In support of this conclusion, the Court in *N.P.* was of the view that “a restrictive approach is not required here just because section 178 lists exceptions to the general principle of discharging the bankrupt” (paragraph 42). Leger J.A. opined that it was unnecessary to resort to the principle of statutory interpretation regarding an exception of this type, as referenced in *Hildebrand* (paragraph 15, above), because any ambiguity in section 178(1)(g) could be resolved using a purposive interpretation of the language. On this point, I prefer the approach adopted in *Hildebrand* which employs all the relevant statutory interpretation principles that may be of assistance in interpreting section 178(1)(g)(ii).

[18] Further, I cannot agree with the conclusion in *N.P.* that section 178(1)(g) applies only when the debtor “finally” ceases to be a student:

[46] I must therefore conclude that, with respect to the application of the exception in paragraph 178(1)(g), there is only one date when studies end, and it is calculated from the time the student finally ceases to be a full- or part-time student. In my opinion, the fact that ten years passed between the two periods of study changes absolutely nothing in this case because, according to the proposed interpretation, the respondent simply did not stop being a student in 1986. ...

[19] In my view, the circumstances in *N.P.* where there was a ten-year gap in the debtor's pursuit of studies provide an example of why the appropriate interpretation of section 178(1)(g) is that the seven-year period begins to run when the debtor ceases to be a student in relation to the particular loan. The approach adopted in *N.P.*, in fact, may encourage those wishing to return to

studies to make an assignment in bankruptcy before proceeding with a plan to pursue a new educational goal. By contrast, to attach the seven-year delay from bankruptcy discharge to the particular loan may encourage a return to studies which, if successful in leading to future economic viability, would preclude the need for an assignment in bankruptcy and result in repayment of all loans. I do not accept the proposition adopted in *N.P.*, which is, to an extent, speculative:

[49] Finally, it is equally important that an individual who resumes studying without having repaid a loan for which he or she is in default under section 29 of the AFAEE is not eligible for financial assistance “unless the person has made an agreement with the Minister with respect to repayment terms and conditions”. The respondent in this case had to sign an acknowledgement of debts in order to receive new student loans in 1997. If he had declared bankruptcy prior to resuming his studies, there is every reason to believe he would have been asked to repay the loan from which he would have been discharged before granting him a new loan.

[50] Indeed, an Alberta statute expressly provides that bankrupts may not obtain student loans unless they have repaid those for which they were exempted.

...

(Emphasis added.)

[20] If the intention was to preclude a bankrupt, who has not repaid a student loan debt, from obtaining a student loan in order to pursue a new course of studies, an express provision to that effect could be expected. This possibility is not a basis on which to conclude that section 178(1)(g)(ii) should be interpreted such that a return to status as a student has the effect of re-setting the date from which to calculate the seven-year period. This is particularly clear in the circumstances now before this Court where the return to studies did not involve obtaining a further student loan.

[21] I note, finally, on this point that the objective associated with undertaking additional studies would seem to be consistent with, rather than contrary to, the purpose of the *Bankruptcy and Insolvency Act*, that is, to facilitate the individual’s future participation in the economy. In balancing the interests advanced by the Act with the objective of discouraging individuals from taking improper advantage of the student loan program, the seven-year delay in discharge of a student loan debt provided for under the Act, and attached to the particular loan, is a significant period of time which should dissuade opportunistic bankruptcies.

[22] The conclusion follows that the seven-year delay in discharge of a student loan debt pursuant to section 178(1)(g)(ii) begins to run from the date when the individual ceases to be a student in relation to the particular loan. A return to studies does not re-set the clock for calculation of the delay period.

SUMMARY AND DISPOSITION

[23] The trial judge did not err in concluding that the seven-year delay applicable to the discharge of a student loan debt runs from the date when the bankrupt ceased to be a student in relation to the particular loan. In this case, that date is December 2001. The assignment in bankruptcy having been made more than seven years after that date, the student loan debt is dischargeable under the Act.

[24] Accordingly, I would dismiss the appeal and order costs on a party and party basis to Ms. Collins.

B. G. Welsh J.A.

I Concur: _____

J. D. Green C.J.N.L.

I Concur: _____

M. F. Harrington J.A.